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ERRATA

Preface, line 2, instead of **sage** read **sages.**

Page 7, last line missing, read **(Baba Mezia 93a). The unfavorable and dangerous.**

Page 11, line 5, from bottom read **to us in Post Biblical Literature.**

Page 15, line 2, instead of **30** read **20.**

Page 37, line 11, instead of **a arrangement** read **an arrangement.**

Page 46, line 6, instead of **one'** read **one's.**

Page 55, line 4, from bottom instead of **Baba** read **Raba.**

Vita, line 5 from the bottom, instead of **Simkhowitz** read **Simkhovitch.**

PROTECTION OF THE WEAK IN THE TALMUD

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PROTECTION OF THE WEAK IN THE TALMUD

BY

MORDECAI KATZ

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To My Wife
DR. HELEN RABINOWITZ-KATZ

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NOTE

The study of the means adopted by the men of olden times by which those who were born weak or became so were protected, is one that is always of interest. It is especially so in connection with the Jews who lived at the time when the Talmud was taking form. Much bitterness of epithet has been employed from time to time in describing the men who lived and worked at that period, and the description of the men has carried in its wake the depreciation of the circumstances in which they lived and of the amelioration that they endeavored to produce.

The present work of Dr. Mordecai Katz deals distinctly with the Talmudic laws put out for the purpose of protecting the weak. Dr. Katz has gone to the ultimate sources and has been able to place before us a succinct account of that which the rabbis of the Talmudic period felt it to be their duty to do in relieving the position of laborers, slaves, minors, women, debtors, and the like. The work is valuable in two ways: it has been done in a perspicuous manner and has been effected in English in order that he who has not cognizance of Hebrew and Aramaic may have the possibility of acquainting himself with the subject. I am glad to commend his book to the very many who must be interested in this field.

RICHARD GOTTHEIL.

PREFACE

An attempt has been made in this thesis to show how the Talmudic sages always endeavored to protect the weaker members of the society, though by doing so they sometimes had to violate the letter, if not the spirit, of the Biblical Law. For this purpose, the writer has made a careful study of all the laws for the protection of the weak, to be found in the Mishnah, Tosefta and the Babylonian and Palestinian Talmuds, as gathered and arranged in the code of laws by Maimonides named the Yod ha-Hazakah.

The weaker during the Talmudic period may be classified as follows:

1. Free laborers.
2. Non-Jewish slaves.
3. Jewish slaves.
4. Minors.
5. Women.
6. Debtors.
7. Tenants.
8. The Poor.

While in his introduction the author has briefly enumerated the principal laws for the protection of these classes, without even showing the sources of most of them, he has, however, treated the same laws in the treatise itself specifically and elaborately, giving their sources and development from the Biblical times down to the Talmudic period.

To his teachers, Prof. Richard Gottheil, Columbia University, and to Prof. Louis Ginzberg, Jewish Theological Seminary of America, the author renders grateful acknowledgment of the guidance and valuable suggestions they gave him in the writing of this treatise.

He is also indebted to Rabbi I. L. Bril, Dr. Sandor A. Levinsohn, Aaron O. Weinberg, Esq., and Mr. Harold Berman, for reading parts of the manuscript.

M. K.

New York, Dec., 1925.

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Columbia University Oriental Studies

INTRODUCTION

THE BIBLICAL AND THE TALMUDIC LAW WITH REGARD TO THE WEAK

The sources of the Jewish code of laws are to be found in the various legal portions of the Pentateuch, and the several later works embodying the Oral Law handed down to the Jews by way of tradition, in contradistinction to the written laws. The written laws of the Pentateuch sufficed only for the primitive conditions of Jewish life of that time. With the gradual development and consequent complexity of that life, there came new demands, new conceptions and new customs, so that the Jewish laws had to be broadened or modified accordingly. The Jewish jurists felt obliged not only to enact new laws but also to abolish long established laws in order to meet the changed conditions of life. By means of a peculiar and an entirely original method of interpretation, the Jewish jurists were frequently able to prove that the new enactments were only the logical steps in the development of the old written laws. In this manner, the sanctity of the ancient written laws was transmitted to the new laws as well.

These new laws remained unwritten for centuries after their promulgation. They were not to be found in any code or law book, but yet they were studied in all schools and recognized by all the courts. In form, they were

similar to the English Common Law. As long as these unwritten laws existed, both in theory as well as in practice, nobody ever thought of the need for their codification, just as the English people do not think it necessary to codify their Common Law. It may be assumed with certainty that attempts to codify some parts of the unwritten laws were made at a comparatively early age, as early in fact, as the first century of the Common Era. Nothing, however, has come down to us of these early attempts, excepting some fragments that were later incorporated with the Mishnah. The Mishnah is the name of an extensive collection of laws gathered by Rabbi Judah, the Patriarch. The date of its compilation may be fixed as at about 220 of the Common Era.

Owing to the great authority enjoyed by Rabbi Judah, the Patriarch, his compilation became a sort of canonical collection of the teachings of the Tannaim ('Teachers'), forming the text books of the students of the Oral Law, around which centered all the comments, discussions and the additional matter produced by all succeeding generations. Sundry other collections, likewise confined to the teachings of the Tannaim, but composed in schools not presided over by the Patriarch, pass under the name either of Mishnah ha-Hizonah (more frequently termed by the Aramaic title Beraita), the External Mishnah, or of Tosefta, addition to the Mishnah. The Mishnah served as a basis for the production of the two Talmuds named after the respective countries of their production, namely, the Palestinian Talmud, called the Talmud of Jerusalem, and the Babylonian Talmud. Used by itself, the term—Talmud—denotes the Babylonian Talmud. The Palestinian Talmud was compiled at approximately the year 350 of the Common Era. The Babylonian Talmud was edited and compilated by Rab Ashi and Rab Abina at about 500 of the Common Era. The latter is by far the larger and the more comprehensive of the two.

The main objective of both Talmuds is the interpretation of the Mishnah, to trace the sources of its laws, give reasons for them, to explain obscure passages, as well as real or seeming contradictions by the aid of parallel passages in the External Mishnah, and to illuminate this matter and to expand its contents, especially in the branches of the Civil Law, by citing such cases as a complex life and altered circumstances were constantly furnishing. It is perhaps due to this latter quality that the text of the Talmud proper, as distinguished from the Mishnah, is called Gemara, meaning, according to some authorities, supplement, or complement of the Mishnah. The jurisdiction of the Talmudic laws was undisputed, its sway extending both over secular as well as purely religious matters.

THE ETHICAL BASIS OF THE BIBLICAL AND THE TALMUDIC LAW

The Biblical laws, although written in the form of the categorical imperative of "thou shalt" and "thou shalt not", are, in reality, based upon the ethical principles of Justice and righteousness that underly the Jewish religion. The foundation of the Jewish law was not a political or a national one, but a religious concept. Even during the time when the Jewish government was functioning, the laws of the land were promulgated not by the political, but by the religious bodies. The religious principles of Justice and righteousness were zealously advocated by the prophets, who were the exponents of the Jewish religion at that time.

The Hebrew prophets differed from the Greek philosophers. The Greeks were not moralists, but utilitarians. There must be some order in the world, they reasoned, as otherwise people "would swallow each other" and so-

ciety would perish. An entirely different viewpoint was that of the Hebrew prophets. The Almighty God is the sole ruler over man and the social order. The ancient social life of the Hebrews was of the tribal order. All the members of the tribe were considered as equal by the patriarch. All enjoyed the same privileges. God was, in turn, the patriarch of all the tribes, consequently all the members of the Hebrew nation were equal before God. This explains why the Hebrew prophets were so outspoken against any oppression of the poor by the rich, and of the weaker by the stronger ones. God is the source of all Justice, of righteousness. Hence, the Jewish laws must always be expressive of the spirit of Justice and righteousness.

The Scribes and after them the Rabbis, continued the work of the prophets, carrying on the earlier tradition of these men of vision. The Rabbis elaborated the ethical ideals of the Jewish religion and incorporated them into the Talmudic laws. The revolt of the prophets against oppression was echoed and re-echoed throughout all the generations, greatly influencing Jewish jurists, who, as a result, always endeavored to protect the weaker members of society and especially the laborers, as far as lay in their power so to do.

FREE LABORERS

Slavery formed an integral institution within all ancient social units. Slavery represented the great labor force of the nation. War, or the preparation for war, was the principal occupation of the masters, while the bulk of the peaceful work necessary for the life of the community and which the masters themselves despised to do, was performed by the slaves.

The ancient, semi-civilized peoples considered manual labor as unsuitable to freemen and even degrading.

Robbery and piracy were considered as the most proper means for obtaining a livelihood. Even the Greeks and the Romans could not rise to the conception that honest and useful work was the only proper means of one's support. Even the philosophers and teachers of the Greeks and the Romans looked down upon the working classes as eo ipso degraded and miserable creatures.

The attitude of the Jews toward labor was entirely different however. Even if it be true that the Hebrew word "lechem," bread, is closely connected with the word "milchama," meaning "war," which definition would show that there was a time when the ancient Jews thought of war as the primary and only means of obtaining a livelihood, it is nevertheless true that the Jews developed at a very early period in their history their higher moral concepts, and, together with these, a higher appreciation of the virtues of manual labor.

The biblical pronouncement that "in the sweat of thy brow shalt thou eat bread" (Genesis 3.19) conclusively proves that the ancient Hebrews granted the moral right to eat bread only to those who had earned it by their own effort. This idea was sustained and greatly developed by the prophets, who, in turn, conveyed it to their successors, the Scribes and the Rabbis. The injunction of the Talmud was: "Flay the carcass of an ass in the market place and earn your pay; do not say 'I am a great man, and the work does not become me.'" (Baba Batra 110 a). As early as half a century B.C. a Jewish sage, in opposition to the teachings of the Greeks, had said: "Love work and hate lordship" (Aboth 1.10). The respect for work which this saying and many similar sayings imply, could not but have a great and lasting influence on the status of labor in the succeeding Talmudic days.

The main regulations for the protection of the laborer are found in the Talmud, it is true, but the principles

underlying these regulations were laid down in the Bible at a much earlier date.

Naturally, the most important thing for the laborer is his earnings. The Bible therefore provided that the wages of a hired laborer should not abide with the employer "all night until the morning" (Lev. 19.13; Deut. 24.14, 15), which implied that each day's work should be paid for when completed. Beside this specific provision for the protection of the hired laborer, there are in the Bible many other provisions for the protection of the poor, the orphan, the widow, and the debtor, who also were laborers, either employed or out of employment (Lev. 26.6; Deut. 1.16; 24.17; 27.19.—Exod. 22.24-27).

The desire to protect the laborer, so repeatedly manifested in the Bible, was upheld with great thoroughness and zeal by the prophets Jeremiah (Jer. 6.7; 22.3), Ezekiel (Ezek. 22.7, 29), and Malachi (Mal. 3.5), and especially by the latter, and exerted a great influence in turn on the Scribes and the Rabbis of the Post Biblical eras.

The Rabbis granted special privileges to the hired laborer and artisan. A contract for labor, for instance, although binding on the employer, was not in the same degree binding on the employee. An employer who was sued for withholding the wages of a hired laborer or artisan, could not free himself from payment by taking an oath. In such a case, the Rabbis denied the defendant the privilege of taking an oath, and granted it to the plaintiff. The employee who affirmed his claim by an oath was awarded the payment of his wages, although, according to the general law, it is the defendant and not the claimant that takes the oath, swearing that he did not owe the sum claimed.

The Rabbis took great pains to enact various regulations for the protection of the laborer and artisan in disputes regarding hours of work and wages, and whether

these had been paid for or not. They elaborated and broadened the Biblical laws with a view of protecting the laborer, even if by doing so they had to override the strict letter of the law.

The following story is told in the Talmud:

Rabbah, the son of Huniah, engaged certain carriers to transport some barrels of wine from one place to another. In handling these barrels, the carriers, evidently through carelessness, (see Rashi) broke one barrel, spilling the wine. Rabbah, the employer, took away their mantles in order to secure himself for the payment of the damage, a course of conduct which the law clearly sanctioned. The carriers, however, hailed him before Abba Arika, who ordered him to return the mantles. When Rabbah asked: "Is this the law?" Abba Arika answered, "Yes," (quoting Proverbs 11.20) "in order that thou mayest walk in the ways of good men." The carriers then said: "We are poor laborers, we have spent the whole day on this work and now we are hungry and have nothing to eat." Abba Arika then ordered the employer, Rabbah, to pay them the stipulated wages. To the question of Rabbah: "Is this the law?" Abba Arika answered, "Yes," quoting the second half of the verse in Proverbs, "and keep the path of the righteous" (Baba Mezia 83 a). The law explicitly gave the employer the right to make the carriers pay for the damage they caused by their carelessness. Abba Arika, however, thought that proper consideration for the poor laborers should outweigh the letter of the law. He quotes the higher law which enjoins us "To walk in the way of good men." This higher law should make one forego his legal claims when those affect the well being of a poor laborer.

There are no special provisions in the Talmud with regard to the labor of women and children. Women and children were usually hired exclusively for farm labor

conditions for women and children workers that are the result of the rapid and enormous development of industry, and which impel our legislatures to adopt special labor laws for the protection of women and children, were not even thought of in the Talmudic period. The Talmudists, therefore, did not find it necessary to enact special labor laws for women and children, when enacting regulations for the protection of the free and non-free laborers.

NON-JEWISH SLAVES

Non-free labor or slavery existed among the Jews at a very early period. The Bible probably was unable to abolish it entirely, as the Jews of the Biblical period would have been unwilling to abolish it because of necessity. The Biblical law, therefore, did not altogether proscribe the institution of slavery, but endeavored to improve the condition of the slaves and protect them in every possible way.

The slave was called "ebed". If he had been bought, this term was supplemented by the term "Miknat keseff," bought for money. If he was born of slave parentage in the household, he was called "ben bayit", son of the house, or "yelid bayit", born in the house, these terms being almost, or quite, synonymous. All these related to non-Jewish slaves.

Among the Jews, the slave was never obliged to struggle for recognition as a human being. The Jews abhorred the views of other nations, such as the Babylonians and others and as expressed or implied in the Hammurabi Code, under which the slave was a mere chattel, whose owner could kill him without responsibility, because he was merely destroying a piece of property, the loss of which was his own and concerned no one else. Entirely different views were reflected in the Jewish

laws. Personal injuries to a slave were considered as crimes punishable by the state. If a master maimed his slave in such a manner that it resulted in the loss of a tooth or an eye, the slave obtained his freedom as a result of this act of cruelty (Exod. 21.25).

The feature that contributed most of all to the betterment of the slave's position was his admission to participation in the family worship. Tradition refers this to very ancient times. The covenant of Abraham was to be entered into not only by every male member of the immediate family, but the master's obligation was to initiate every male slave into the covenant (Gen. 17.9, 11,12). This was not a form of compulsion exercised upon the slave, but a privilege granted to him in order to advance his standing in the household of the master. We also learn from the Bible, that the slaves were uniformly treated as members of the family, after whose well-being the master cared as zealously as for that of his children. They were not mere mute chattels, but were often asked for their opinion and advice (Genesis 24). This spirit of the Biblical provisions for treating the slaves as human beings were echoed and re-echoed by the prophets and the sages, and permeated the entire body of the Talmudic laws

While, on the one hand, the non-Jewish slave was considered as the property of his master, just as were his fields and cattle, on the other hand, however, he was regarded as a human being who was at all times entitled to protection. The law of the Bible concerning the killing of a slave (Exod. 22) is not quitė clear, but the Rabbis interpreted it to mean the death penalty, just the penalty that is inflicted for the slaying of a free man.

The Rabbis also endeavored to protect the slave from being injured by his master. The Biblical law stated only two kinds of injuries for which the non-Jewish

slave was to be freed, but the Talmudists extended this law to apply to any kind of injury by which the slave had lost any one of his limbs. The Jewish jurists always sought ways and means for diminishing slavery, and enacted various regulations for the accomplishment of this purpose. In doing so they were frequently inconsistent, but they preferred rather to run the risk of being logically inconsistent than to leave the slave without any protection. They also provided most explicitly for the humane treatment of the slave and forbade the master to humiliate his non-Jewish slave in any manner or form (Chapter II).

JEWISH SLAVES

There was actually no Jewish slavery during the Talmudic period. According to the assertion of the Talmud, slavery was abolished about 735 B.C. This, of course, is hardly tenable, but there can be no doubt that as early as the beginning of the Common Era, Jewish Slavery became a thing of the past. The Talmudic laws regarding Jewish slavery are, therefore, merely theoretical discussions. It is, however, interesting to know what were the theoretical principles of the Rabbis with regard of the protection of the Jewish slaves.

The Jewish slave, according to the Bible, was just a laborer bound over to work for his master a certain number of years. He could become a slave either by selling himself in order to support his family, or by being sold by the order of the court in order to make restitution for a theft. The Talmudists sought to prevent and restrict both forms of slavery as well as enacted many regulations, by which a Jew, if already sold into slavery, could obtain his freedom. They also provided for the future of the freed slave, in order that, after obtaining his freedom, he should have some means for earning a livelihood.

All these regulations relate to the male slave only, as a woman could be sold as a slave only while a minor, and she was amply protected by the Talmudic laws as such (Chapter III).

MINORS

The problem of the minor played but a small role in Biblical times. As a matter of fact, no technical term for denoting the minor as a class is found anywhere in the Bible. The terms for child—"Yeled"—or little one —"Yeled Katan"—are used merely for describing physically immature persons, and do not denote a class of beings, whose right, duties and responsibilities are different from those enjoyed or borne by a mature person. These terms are never used in the Bible in connection with phases of life that enter into the realm of law and responsibility. The simplicity and lack of complexity of early Jewish life did not offer sufficient opportunities for the development of a clear line of demarcation between the minor and the adult. Nor was the organization of society in Biblical times as a whole conducive to the formation of a code of laws dealing with the minor. The father at that time truly was the head of the family, and as such had full control over it during his lifetime. The question of the amount of individual freedom to be enjoyed by the minor child could have no proper place at a time when even the adult son was without any individual rights or powers. Therefore, we do not find any special laws in the Bible dealing with the protection of the minor.

A different picture, however, of the minor is presented to us Post Biblical Literature. As Jewish life became more complex and new institutions and modes of life arose that were unknown during the Biblical period, the problem of the minor began to impress itself more and more on the Jewish mind. It is then that the minor be-

gan to be dealt with as a special class and a permanent place in Jewish Jurisprudence was given to him.

The Talmudists provided ways and means for the support of minors in general and for the support of the minor daughter after the father's death in particular, due to the fact that the daughter was excluded from sharing in the estate of her father. The Rabbis also established the Miun institution, which gave to the minor female orphan the power of invalidating the marriage contracted for her either by her mother or elder brothers. The Rabbis also took great pains to restrict the right of the father to sell his minor daughter into forced service, as well as sought to give her an opportunity to regain her freedom after she had been sold. Very important provisions were also made in the Talmud for the protection of the property of minor orphans (Ch. IV).

THE TREATMENT OF WOMEN

The position of the woman among the Jews was, comparatively, much higher than among all other nations. There are no traces anywhere, either in the Bible or the Talmud, of the husband's right to sell, administer corporal punishment, or to kill his wife, as was the case among many ancient peoples. The old Biblical saying "but he shall rule over thee" (Gen. 3.16) was interpreted by the Talmud (Erub. 100 b; Kid. 2 b. Nedar. 20 b) to mean only, that, it was expected of the woman to be more retaining and more modest than the man, but not that she was to be the slave of her husband. On the contrary, the Jewish husband was required to honor his wife and to treat her in the most cordial manner, for "he who has not entered into wedlock, lacks joy, lacks blessing and lacks good fortune" (Yeb. 62 b.).

"The relations between the two sexes in Israel", says the Jewish historian Graetz, "were entirely free. Boys and girls gathered together to dance under the strains

of the drum, especially on occasions of weddings and in the time of harvests, laughing and singing cheerfully and happily" (Graetz, Geschichte der Juden, 2, p. 365).

The married woman, of course, did not enjoy so much freedom as her unmarried sister. She was not, however, confined to a harem, as was the case with women of other Oriental peoples. She could show herself in all the public places freely and undisturbed (Exod. 15.20; Deut. 25.11; II Sam. 20.16; Psal. 68.26; Rut. 2.5).

"Man and woman," it is said in the Talmud (Kid. 35 a; B. Kama 15 a) "are equal before the law." But the social status of the woman was by far not equal to that of the man (Sotah 11 b). The Rabbis therefore sought to protect the woman in various needed ways.

The Rabbis enacted many provisions for the protection of the wife as against her husband. According to Biblical law the duties of the husband to his wife are three, but the Rabbis added seven more. One of the most important provisions for the protection of the woman was the "Ketubah", a document in the nature of a marriage settlement, whereby the woman was to obtain a certain amount of money, in case of divorce or in case of the death of the husband, in order that she may be provided for at the time when she had nobody to support her.

Although usually the woman was dependent on her husband for her support, the latter had no right whatever over the person of his wife. The wife enjoyed complete freedom, and her husband had no right to compel her to change her habits, customs and manners.

The right to divorce was confined by the Bible exclusively to the husband. The Rabbis, however, also gave the woman the right to claim divorce in many instances, compelling her husband in such cases to grant her a bill of divorce.

How far the Jewish jurists sought to protect the woman may be especially seen from their regulations concerning the "agunah", the deserted woman. Adultery is a criminal offence punishable by death, according to the laws of the Rabbis, based on the Biblical law. Nevertheless, the Rabbis endeavored to find a way to grant to the deserted woman who did not know the whereabouts of her husband permission to remarry on the slightest evidence of the death of her husband.

The Rabbis also provided for the protection of the widow, especially for the widow debtor as against her creditors (Chap. V).

DEBTORS

The matter of interest for money borrowed or "tarbith" (increase) for victuals formed an important consideration in labor conditions of the ancient world. The wages, or other compensations, for work done must have been so scanty that whenever anything outside of the ordinary routine occurred in a laborer's family life he was compelled to resort to a loan to tide him over the difficult period and for this loan interest, or increase, was exacted. No one but their employer would lend the money to these laborers, and there was practically no opportunity to earn a surplus wherewith to pay it back. Again, it would frequently happen that, as new difficulties arose, there would have to be more loans. The natural result of such conditions would be that the poor laborer would have to work all his life in a vain effort to discharge a debt which was steadily mounting higher and higher. He would, in brief, find himself in a position barely distinguishable from slavery, so that the problems of curing this evil became insistent. The result of this threatened evil was the ordinance which forbade the charging of interest to any Israelite who became impoverished (Lev. 25.35-37), and finally led to the sweeping

prohibition not to take interest from any one but an immigrant alien, a foreigner (Deut. 23 30, 21).

The matter did not, however, end there. This law practically acted as an obstacle to the development of all commerce, and had the evident result of favoring and stimulating agricultural activity. Trade and commerce were left to the "nokhri", meaning, most probably, the Phoenicians and the Tyrians. Isaiah speaks of Tyre as destined "to have commerce with all the kingdoms of the world" (Isa. 23.17), Ezekiel addresses it as "the merchant of peoples for many isles" (Ezek 27.3), while the Book of Proverbs and Job both employ the word "Kena'ani" (Canaanite) in the sense of "merchant."

Yet, however discouraging this State policy of the Hebrews was to mercantile enterprise, it was steadily adhered to nevertheless. "Take no interest from an Israelite" was the ordinance. Like all severe prohibitive measures, there were those who did violate it. Ezekiel is especially bitter against these, holding them up as criminals of the deepest dye (Ezek. 18.13). While his denunciation may have been considerably intensified by his ultra-enthusiasm for the cause, it nevertheless reflected the general opinion of the people. A man entitled to respect, one "who shall sojourn in Thy tabernacle" is he "that putteth not out his money on interest" (Psalm 15.5). The Book of Proverbs is equally condemnatory of the taking of interest, and explicitly states that "He that augmenteth his substance by interest and increase, gathereth it for him that is gracious to the poor" (Prov. 28. 8). This spirit of the prophets and wise men was in due course of time transmitted to the Scribes and to the Rabbis, and exerted a great influence on their interpretations and decisions rgarding the edict of the taking of interest.

According to the Biblical law, only direct, or express interest was prohibited, but the Rabbis prohibited also

all other kinds of indirect and even that which may appear as interest, even to mere words, the paying of compliments or the furnishing of any information that would not have otherwise been given. Furthermore, according to the Talmudic laws, in any case of disobedience to this law, it is not only the debtor and the creditor who transgress the negative injunction relating to the taking of usury, but also the surety, the witnesses and even the scribes are held responsible for the violation of this injunction.

According to the Biblical law, the Court, at the request of the creditor, was authorized to exact a pledge from the debtor to assure the creditor against the eventuality of his failing to pay the debt in time. The Rabbis, however, enacted many regulations, through very clever interpretations of the Biblical law, by means of which the taking of a pledge was rendered exceedingly difficult, in order not to deprive the poor debtor of his utensils and most necessary clothing and food for his household.

TENANTS

There are no provisions in the Bible regulating the relations between landlords and tenants. Most of the Jewish people during the Biblical period occupied themselves with agriculture and most probably lived in huts which they themselves had built. With the development of commerce and industry, great numbers of the rural population migrated to the cities and became laborers and artisans. Quite naturally, many of those laborers and artisans could not afford to build or buy homes for themselves. Thus, the rental system gradually developed and, together with it, many hitherto unknown problems between landlord and tenant came to the fore. The Rabbis, therefore, found it necessary to enact certain provisions for the protection of the tenants against the landlords.

The Talmudic jurists enacted certain laws whereby landlords could not dispossess their tenants without giving them due notice of their intention. In the larger towns the landlord was required to give the tenant twelve months notice prior to the time of the intended termination of the lease, because it usually was found difficult to obtain other premises during the middle of the year. The landlord was also required to provide the house with a door, lock, and such other necessary equipments requiring the work of an artisan. The Rabbis also provided for the protection of the tenant in case of the destruction of the dwelling. It is interesting to note, however, that the Rabbis did not seek to protect the farm tenant as much as they sought to protect the house tenant. The reason for that seems to be that the tenant of a dwelling leased the house not for business but for dwelling purposes, whereas the farm tenant leased the field for business and profit, and does not therefore belong to the weak and poor classes that are in need of protection (Ch. VII).

THE POOR

There was very little need for provision for the protection of the poor during the primitive stages of a people's life. The family or clan took care of its weak or disabled members. But just as soon as urban conditions developed and the congestion of population began, poverty became a problem and in need of remedying.

Among the Jews, poverty first became a problem during the 9th century B.C. The conquests of Jeroboam II in the north of Palestine and those of Uzziah in the South resulted not only in the capture of much booty and lands, but also in hitherto unknown trade opportunities and accelerated as well the growth of large and powerful commercial classes. The result of this was that

while the upper classes revelled in wealth and luxury, the great body of the people suffered from want and were being exploited by the few.

These social maladjustments were not altogether limited to city life alone. The land owners of the country places also grew fat, beyond a doubt, at the expense of the small farmers and laborers.

The prophet Amos at Bethel, in Israel, and the prophet Isaiah at Jerusalem, in Judah, made entirely clear the direct connection between economic oppression and want. To their minds, destitution was fundamentally a consequence of social and economic exploitation. The sources of want they unhesitatingly traced to the unfair advantage taken by the strong of the weak members of the nation.

These social and economic evils they denounced quite fearlessly. Taking their stand on the basic principle that all men are brothers, the children of the self-same God, (Mal. 2.10) they attacked, in fiery language, the oppression of the poor and the defenceless ones. Amos, Isaiah and Micah were especially severe in their indictment of social wrong-doing. (Amos. 2.6-8; 4.1; 5.11; 8.4—Isaiah 1.23; 3.15, 16, 17; 5.7, 8, 20; 10.1-2; 11.4, 5; 16.4, 5—and Micah 3.1, 5; 2.1-2). The ethical teachings of the prophets subsequently became crystallized in the poor laws of Deuteronomy. 24; 26.

To help the less fortunate members of society was mandatory according to the prescriptions of the Pentateuch and not a request. Benevolence is viewed not as a matter of grace, but as the imperative duty of the Israelite. Based on the premise of human equality, based on a common divine origin, the Torah (Pentateuch) made provisions for the distressed in a multiplicity of ways not at all partaking of the nature of alms, but rather, one may say, of enlightened profit-sharing. There

were several ordained measures of aid suited to the recurring seasons, and bearing a relationship to the land and its products. Perpetual alienation of ancestral land or homestead was forbidden by the Jubilee Law, a measure designed to prevent permanent impoverishment of the people. If this measure had not been nullified or generally disregarded as time went on, its application would have gone a long way towards the accomplishing of the wished for result. The spontaneous growths of field and garden during the Sabbatical year—which was every seventh year—had to be left free to all comers, with special thought and mention of the poor (Ex. 23. 11). Every third year a tithe—one-tenth—of all products of the soil had to be given to the needy (Deut. 14.28—29. At every successive harvest season a corner of the entire grain field (Lev. 19.9 and 23.22), the gleanings, and the forgotten sheaves, were left to the poor and the stranger; and at every ingathering of the fruits of the vineyards and the olive-groves the imperfect and topmost clusters of grapes and olives were reserved for them (Lev. 19. 10). In connection with the celebration of the three pilgrimage festivals (Passover, Weeks and Tabernacles) at which time attendance at the capital was required of all families (and notably of the males), it was ordained that the stranger, the widow and the orphan be invited to share the food of the pilgrim (Deut. 16. 11-14).

The entire Bible vibrates and tingles with a quick and burning sympathy for the poor and the handicapped. The Biblical period did not, however, develop a comprehensive system for the protection of the poor. It made charity a human obligation, incumbent on every person, but the extent of most of the benevolences enjoined was left to the conscience and the generosity of each individual.

The Rabbis, however, realized that it was not sufficient merely to preach high ideals, but that it was also necessary to establish definite laws whereby those who were

able to give, would be compelled to give to the poor and thus the community was enjoined to render assistance to its dependent ones. Here, as elsewhere, they realized fully that practical legislation must content itself with accomplishing that which it is possible to accomplish under the given circumstances. Thus we find that whatever lofty ideals about spontaneous charity they expressed in their Agaddic utterances, and they have many such thoughts, in their legal enactments they confined themselves to what was considered practical. They aimed to secure to the poor the help that they needed as well as to impress upon the rich the obligation that rested upon them. They tried to give to charity its full Hebrew connotation, Zedakah, namely, Justice, regard for the rights of the poor. This idea of Justice in charity, demanded that charity be collected only from those who were able to give it, and distributed only among those who really were in need of it.

The Rabbis, therefore, regulated by law, the collection and distribution of charity. They ordained by law those classes and individuals who must contribute and in what proportion to their incomes that contribution is to be. They also determined who were to be the recipients of this charity and how the distribution was to be administered (Ch. VIII). They permitted only one exception to the rules they established regarding investigation. A hungry person must be fed without any investigation whatever (according to the opinion of Rabbi Judah which is supported by the Beraita (B. Batra 9a).

The Rabbinic laws and regulations concerning charity and relief, as those bearing on other aspects of life, had for their basis the legislation, the ideals and the standards established by the Bible. Upon these latter, the Rabbis of the Talmud built the superstructure of their own teachings. The decisions of the learned bodies of the Palestinian and Babylonian academies and the opin-

ions of individual teachers of distinction recorded in the Talmud (the former having the force of law and the latter that of revered instruction and opinion); the enactments of local and district councils, carrying authority in the territories over which they exercised jurisdiction—all these were in the nature not of supersession of the Biblical doctrine, but rather of elaboration and supplementation. It was in fact, the rich reservoir of humanitarian and ethical ordinances and the sentiment crystallized during centuries of unparalleled outer and inner experiences preceding the Talmudic era, that supplied both the momentum and the plan for the unbroken chain of philanthropic ideals and endeavors, forged during the Talmudic period. The very pre-eminence of the Biblical doctrine insured its permanence in the Rabbinical era.

The supreme authority vested in the law and its accredited elaborations, tended to shape all legislation into fixed molds, and to circumscribe freedom of wider interpretations so far as the general outlines of personal and communal procedure were concerned. Real rigidity did not, however, set in until the actual codification of the Talmud (C. 500 A.D.). Even then, eminent teachers permitted themselves to differ now and again from the traditional rulings. And, side by side with the legalistic material there was also issued by the sages a mass of instructions which took the form of tales and aphorisms. Life, with its demands and its experience, ever independent of previously created molds, created its own norms as it needed them (Ephraim Frish, An Historical Survey of Jewish Philanthropy—pp. 1-47).

We shall now proceed to the Talmudic laws concerning all the weak elements treated in our introduction, and show how the Rabbis always endeavored to protect them against the stronger classes. We shall consider each law or enactment separately, trace its origin in the Bible and point out the various elaborations and interpretations

which were made by the Talmudic jurists with the object of improving the position and the standing of the lowly and the weak in society.

I—THE STATUS OF FREE LABORERS

1. Privileges of the Hired Laborer and Artisan.

There were four kinds of free laborers during the Talmudic period: (1) The "sakir"—the hired laborer, who was employed for a definite period of time but not for any particular kind of work; (2) The "poel"—the artisan, who was employed both for a definite period and for a definite piece of work; (3) The "Uman"—the skilled artisan who undertook to do a certain piece of work; and, (4) The "Kablan"—a contractor who may, or may not, be a skilled laborer himself but who undertook to complete a certain job either by himself or through others. The Talmudic law endeavored to extend its protection to all these laborers, but sought to protect especially the hired laborer and the artisan.

(a) Breaking a Contract.

A contract became operative when the work undertaken was started, and was binding upon the employer, who could not thereafter discontinue the work, even if by doing so he caused no loss in any manner to the employee, i.e., even if the employee had lost no opportunity thereby for obtaining other work. If the employer broke the contract he was obliged to pay to the employee the full amount agreed upon for the work.

With the employee, however, it was different. He could drop the work at any time without feeling bound to give any valid reason for his action. The employee was privileged to quit his work at any time even if the employer was not in a position to find at that time any one else to continue or to finish the work that had been started by the worker.

According to the Talmudic Law no contract could be made on futures, because the things contracted for are not yet in existence. A contract for future labor was not binding upon the laborer. However, if the contract for future labor has been entered into, though it could not hold the laborer, it was enforceable upon the employer. This alone amply demonstrates that the Rabbis were prepared to grant special privileges to the worker.

The special privilege granted the employee to break a contract, was not without its moral justification. The obligation of the employee to work for a certain time deprived him of his freedom, and placed him in a position of temporary servitude. To justify this right of an employee to break his contract the Talmud cited the Biblical statement ascribed to God "For unto Me are the children of Israel servants" (Leviticus 25.55), adding: "and not servants to servants" (Baba Kama 116 a; Kidushin 22b). The Rabbis sought to protect the personal freedom of the hired laborer and the artisan and therefore granted to them a privilege which was not extended to the skilled laborer and contractor.

The skilled laborer or contractor who agreed to complete a definite piece of work without any particular regard to time, did not thereby sell his freedom, and, hence, was not permitted to abrogate his agreements with his employer (B. Kama 99b).

(b) Taking an Oath.

According to the Biblical law a man who was sued for withholding money or valuables, could establish his innocence in the absence of evidence by taking an oath upholding his plea. This law, however, according to the Talmud, was not to be applied in the case of an employer who was sued for withholding the wages of a hired laborer or an artisan. In this particular case, the Talmud voids the Biblical law and takes the privilege of the oath

away from the defendant and gives it to the plaintiff. The employee who affirmed his claim by oath was awarded the payment of his wages (Shebuoth 45a).

The explanation of this privilege, as given in the Talmud, was that the employer with much other pressing business on hand was apt to forget about the payment due to the employee, whereas the employee could not but remember whether or not he had already received his wages (Baba Mezia 112b). The underlying motive, however, seems to have been the fact that the employee was dependent for his livelihood solely on his wages and it was therefore considered proper that he should receive, under oath, his pay, although ordinarily the defendant had the privilege of taking this oath in order to free himself from debt.

(c) Exemption from Liability for Damages.

The Talmud absolved the hired laborer from the responsibility of damages for an article spoiled by him accidentally in the process of labor. He was required, however, to take an oath that the damage had been caused by accident or error, and not by wilful negligence. This was a reform intended primarily for the protection of the laborer. Logically it would appear that if an article is broken or spoiled in the process of labor, the responsibility of the laborer should be as great as though the article had been stolen or lost, in which case the hired laborer is obliged to pay for it. But the spoiling of an article in the process of legitimate handling may occur quite frequently, and, in order to protect the laborer, against loss, the Talmud felt bound to consider it like any other unlooked for accident, such as the death or injury of an animal while at work, in which case the laborer would not be held responsible for the loss. This is, as a matter of course, an inconsistency. The Talmud itself states that if the laborer were required to pay for an article spoiled in the process of handling, no one

would undertake to do any work for a stranger. It must, therefore, follow that such occurrences might be expected rather frequently. Nevertheless, the Talmud places such accidents in the category of catastrophes or unusual occurrences, and frees the laborer from responsibility and the payment of damages. The inconsistency is ignored by the Talmud for the moral motive in protecting the laborer (B. Mezia 82a).

2. Regulations Regarding Time, Wages and Payment.

(a) Time.

The hours at which the day's work was expected to start and to finish were determined by local practice (B. Mezia 83a). The employer could not compel his laborers to begin his work earlier or to work any later than the accepted time of the locality in which the work was done, even though he paid them more than the usual wage, as long as he did not stipulate his expectation of larger hours of labor.

It is implied in this ordinance that if the employer had agreed to give them the increase it was with the view of having them perform better work, and not for the purpose of having them work longer hours than is customary.

The hired laborer was permitted to deduct from his working hours the time which he spent in walking from his home to his place of work. This provision was made in order that he be not compelled to leave his home before the break of day, the working day usually beginning at sunrise. He could not, however, deduct from his working hours the time required for returning from his work to his home (B. Mezia 83a). Nor may the laborer be employed after his day's work by somebody else in the evenings or at nights, because by doing so he would exhaust his physical capacity for work, and would ne-

glect his work on the following day, and so cause his master a loss by it (Tosefta B. Mezia Ed. Zuckermandel 381.25). The duty of the laborer was to devote all of his working time, excepting the time required for eating and for necessary rest, to his work (Kidushin 33a). In the final analysis it will be found that the protection of the laborer by the Talmud was not intended to permit the employee to injure his employer and his legitimate interests.

(b) Wages.

In the absence of any agreement between employer and employee regarding wages, the employer was obliged to pay the worker according to the accepted wage scale of the locality. The employer who authorized an agent to hire workingmen for a stipulated wage, was expected to pay them the wage agreed upon by his agent, even though this wage was higher than the one which the latter has been authorized to offer them, provided, however, that the employees were able to convince the employer that the wages offered were not excessive for the services rendered (Baba Mezia 7 a). This ordinance was enacted solely for the protection of the employee, for in no case, except that concerning employees and employers, was one required to fulfill the unauthorized promises of his agent. If, again, the value of the work done was estimated to be less than the wage promised by the agent, the master was required to pay to the employee only at the rate of the established wage of the locality, and the employee was entitled to demand the balance from the agent.

(c) Payment.

The Talmud lays particular stress on the Biblical law which prohibited the delay of payment of wages to the employee. If the employee had been working by the hour during the day he was entitled to receive his pay

during that day. If he had worked by the hour during the night he was to be paid that night. In the case of one employed for a week, month or year, if his contract chanced to expire during the day, he was entitled to his pay on that very day; if the contract expired at night, he was to be paid on that night. The Biblical law prohibited the delay of payment until after sundown (Lev. 19.13). For people ordinarily work during the day, and the Biblical provision was intended for the day laborer. The Talmudic law, however, added also the above provision for the protection of the night laborer (B. Mezia 110a). The Talmud realized how eager the wage earner was for his wage, and emphasized the fact that he who wilfully retained the wage of the employee was as culpable as if he had deprived him of his life (B. Mezia 112a).

If an employee had come to the house of an employer to demand his wages, and was attacked by the employer's dog, the employer was held to be responsible, even if the employee had entered the house of his employer without permission, for the employee had a right to come and demand his wage if the employer could not be reached outside of his home (B. Kama 33a). It is very likely that this law was also extended so as to apply to all creditors who came to the houses of their debtors to demand their debt, but the very fact that the Talmud cited this law only in the case of an employee, shows the earnest desire on the part of the Talmudists to assist the employee to obtain his earnings from the employer.

The Talmud also ordered the employer to pay the employee in cash and not in kind, for the employee may sometime experience some difficulty in exchanging these products for cash, and may also lose by the exchange. If, however, the employee had already taken from the employer certain products on account, the employer was entitled to deduct the value of the products from the wages due to the employee (Baba Mez. 118a).

If one has been hired to go to a certain place and bring back a certain article and he went there but did not find that article or object, he was entitled to full pay for his services even though his errand had not been completed. Likewise, if one hired a laborer by the day to do a certain piece of work and the laborer completed the work in less than a day, the employer may order him to do other work for the rest of the day, provided, however, that the new work offered were similar to, or easier than, the work for which he had originally been hired, but he could not order the employee to perform a more difficult task. If no other suitable work for the laborer was available the employer was obliged to pay for the entire day (Tosefta B. Mezia VII, 6). In such a case, however, inquiries were made as to how much less a laborer would have been willing to take per day if required to perform no work at all than if he was expected to perform his usual day's labor (B. Mezia 76a).

3. The Legal Difference Between the Hired Laborer and the Artisan, and Between a Contractor and a Skilled Laborer.

(a) Contractor.

The privilege of disregarding a contract at any time given to the hired laborer or artisan was not extended to the contractor. The contract was considered to be in effect:

1. When the contractor began the work, if the work were to be done in the house of the employer;

2. When the worker took the necessary materials home, in case the work was to be done in his own home, or

3. If the contractor took from the employer any money on account.

In all these cases, the contract is as binding upon the contractor as upon the employer. This law, although not stated expressly in the Talmud, is derived by the Talmudic commentators from other laws which make it deducible (Baba Mezia 48a, Tosfoth, beginning Veho). Of course, the skilled laborer could disregard the contract if there was a valid reason for doing so as for instance, if the employer had agreed to pay for the work in instalments during the process of work and did not meet these instalments when due in accordance with his agreement. The employer may also disregard the agreement if the contractor did not finish the work within the time agreed upon. The contractor, however, was not permitted to break his contract without sufficient reason as could the hired laborer or the artisan.

(b) Skilled Laborer.

The Talmud is very severe with the skilled laborer who spoiled an article by negligence in the process of handling same. Teachers, city physicians or other professionals were subject to dismissal without any notice if they spoiled anything through negligence. The following story is related in the Talmud:

Runia, the gardener of Rabbi Abina, spoiled the orchard of his master, and was dismissed from service. The gardener complained before Rabba, but the latter told him that he had received his just deserts. "But he gave me no notice!" protested the gardener. "He is not required to give you any notice," was the answer of Rabba (B. Mezia 109a).

In one certain respect, the Talmud did endeavor to protect the interests of the skilled laborer, as strongly as those of the hired laborer or the artisan. The Talmudic law ordered the employer to pay to the skilled laborer his earnings on time, and warned against any delay. The payment was due, according to the Talmud, as soon as the work was completed and the product delivered to the

employer (Baba Mezia 112a), and the latter is ordered to pay to the laborer within twenty-four hours the wages agreed upon.

Generally speaking, the "Rights of Labor," according to the Talmudic law, are in reality the rights of the laborer. Labor is protected by the Talmud in every possible respect. Many of the Rabbis at the Talmudic period were themselves farmers, artisans and laborers (B. Mezia 48a). They realized that if the laborer sold his time it was because he was compelled to do so in order to avoid starvation, and they therefore, enacted many special laws for his protection.

II—NON-JEWISH SLAVES

1. The Right of the Slave in the Talmud.

The non-Jewish slave was not, according to the Talmud, on the same level with the Jewish slave. The former was considered as part of the property of his master, whereas the latter was considered as merely a servant who was obliged to serve his master for a term of years. The non-Jewish slave enjoyed no property rights (Baba Kama 27a; B. Mezia 96a). Thus, if he were injured, the compensation for his injury was awarded not to the slave but to the master (Mishnah Baba K. 87b).

The non-Jewish slave could not make a contract, or be a witness in court (Mishnah Baba Kama 14b). His master had the right to marry him to any one of his women slaves (Git. 40b). He also could pawn him and convey him to others, just as was the practice among the Greeks and the Romans, but the master had no jurisdiction over the life of his slave (Exodus 21.20).

Logically, if the non-Jewish slave was considered the property of his master he should have been treated as a mere chattel. This, in fact, was the attitude of many

ancient nations toward their slaves. The attitude of the Jewish jurists, however, was different. While, on the one hand, the slave was considered as the property of his master, just as his cattle and other goods, on the other hand, however, he was considered as a human being, who was entitled to full human protection. This apparently is an inconsistency, but the Jewish jurists preferred rather to undergo the risk of logical inconsistency than to leave the slave without any protection.

The ordinances for the protection of the slave by the Talmudic law is as a matter of course based upon the Mosaic law. The Biblical law explicitly states that: "if a man smite his servant or his maid with a rod, and he die under his hand, it shall be surely avenged . . . And if a man smite the eye of his servant, or the eye of his maid that it perish, he shall let him go free for the sake of his eye. And if he strike out his man servant's tooth, or his maid-servant's tooth, he shall let him go free for the sake of his tooth" (Exodus 21.20, 21, 26, 27).

These laws were enacted in order that the master may not act cruelly towards his slave. The Rabbis, however, went even much further in their efforts to protect this submerged class of beings.

According to the Bible, the murder of a slave by a master had to be avenged, but there was no definite provision made as to what that vengeance ought to be. The Talmudic jurists interpreted this vengeance to mean punishment by death. The Rabbis considered the slave as a full-fledged human being, and, consequently, the master who killed his slave was to be regarded as any other murderer and dealt with accordingly (Mekilta Exod. 21. 2; Sanhedrin 52 b).

The Rabbis also provided, that the witnesses who gave false testimony in court against a slave with the intention of inflicting a death penalty on him, were them-

selves to be put to death, just as if they had given any other false testimony that might inflict the death penalty upon a free man, a crime that was punishable by death (B. Kama 88a).

According to the Biblical law, if one killed a person accidentally, he was to be banished to the cities of refuge. The Rabbis extended this law also to one who accidentally had killed a slave (Makkot 8b).

The Biblical law enumerated only two kinds of injury for which the slave was to be freed; namely, if the master had struck out an eye or a tooth of the slave. The Rabbis extended this law to any kind of injury by which the slave had lost any of his members enumerating twenty-four of these members (Yerushalmi Gitt. 2. IV, 4). According to the Biblical law, if the injury of the slave by his master was accidental, the slave was not entitled to his freedom, but the Talmudic law held that the slave was to be freed even for unintentional injuries. Moreover, if the master was a physician and caused the loss of a member to his slave while operating on him with the intention of curing him of any disease, the slave, according to the Talmudic law, was to be freed (Kidushin 24 b).

Among the ancient peoples it was frequently customary for the masters to castrate their slaves and use them thereafter as eunuchs. Castration was Biblically prohibited. The Rabbis went a step further, enacting the forfeiture of the slave if castrated by his master (Kidushin 25 a).

To what extent the Rabbis sought the protection of the slave from possible injuries by his master, may be seen from the following ordinance: According to the Bible if the master caused the loss of an eye or tooth to his slave, he was compelled to grant him freedom. Logically, this implied that the eye or tooth which was

destroyed had been a functioning member and conversely, one would suppose that the loss or destruction of an eye or tooth which had already ceased to function properly would not entitle the slave to his consequent freedom. This was not so, however. According to the Talmudic law, a slave who sustained an injury through the act of his master, was entitled to his freedom, even though this injury affected a part which had already become imperfect, as long as it was not entirely non-functioning (T.B.B.9; Kid. 24b).

2. How the Rabbis Sought to Diminish the Practice of Slavery.

As has already been stated, the Jewish Rabbis felt an aversion to the institution of slavery. They realized however that time was not yet ripe for its entire abolition. They endeavored, therefore, to diminish, as far as possible, the evils of the existing slavery and to prevent its further extension. In order to accomplish this aim, the Rabbis sought continually for some clue in the Bible by means of which they could derive new laws in favor of the slave. Due to the elasticity of the Biblical style, the Rabbis were able to derive from the terse Biblical phrases many new laws for the protection of the slave, as a result of which slavery among the Jews was gradually regulated almost out of existence.

A non-Jewish slave was either born a slave, descended from a slave parentage, or had been purchased by his master from neighboring peoples (Sanhedrin 56a; 85b). Usually, in time of war the conqueror sold the conquered ones as slaves. Some people, again, were sold as a punishment for some crime. The sale of slaves usually took place at a special slave market.

To diminish slave trade among the Jews, the Rabbis enacted a law, prohibiting a resident of Palestine from selling a slave to a resident of a foreign country, even

though the buyer was a Jew (Gittin 43b). As the slave trade was mostly a matter of international commerce, this provision limited to a great extent the slave trade among the Jews of Palestine. The Jews bought only as many slaves as they needed for their own use and not for sale.

A slave could obtain his freedom in the following manner:

(1) By the loss of one of his limbs caused by the act of his master.
(2) By obtaining a Bill of Freedom from his master; and
(3) By paying to the master a certain sum for his ransom.

The question then arises, what means did a slave have for obtaining money for his ransom if he were not permitted to own any property and if whatever wealth he possessed belonged to his master and not himself.

According to the Talmudic law, provision was made that if one who was interested in the freedom of any certain slave had paid directly to the master the sum needed for the slave's ransom, or if one gave to the slave as a gift a certain sum of money stating expressly that this was to be used for his ransom, the gift so given would not belong to the master, but remained the property of the slave who may use it for this particular purpose (Kidushin 22b; 23).

If the master had expressed in his last moments his wish to free his slave, and had died before he had time to perform the necessary formalities to make his wish legally binding on his children, the heirs were obliged to grant this slave his freedom (Gittin 40a). Furthermore, if one had two slaves of the same name and had ordered before his death the freedom of one of them,

and did not state expressly which one of the two he meant the both of them were to be freed. In order, however, to do justice to the heirs, the law provided that both freed slaves should pay to the heirs the value of one of them (Tosefta B. Batra XI. 13).

According to the law, one may change his will or annul it entirely at any time he wished. But if one granted freedom to his slave in his will, he was never permitted to change this provision and the slave was to be freed immediately, even though the master was still alive (Gittin 9 a).

If one, in the belief that he was going to die, conveyed his property to his slave, the slave was to be freed. The reason for this was, that a slave could own no property, and, hence, if the master willed his property to the slave his intention apparently was to free the slave, in order to enable him to inherit this property. If the master recovered after making his will he may annul the property gift that had been made to the slave in error, but he was not permitted to annul the freedom which he had in this way indirectly bestowed upon his slave (Peah III.5; Gittin 9a;). For the same reason, a master, after bestowing a gift of property upon his slave, and by so doing, giving him his freedom, was not permitted to retract later on this gift of property and freedom and to set claim that he was not serious in his intention (Gittin 8b; 42a; B. Batra 11a).

Likewise, the slave was entitled to freedom if his master had married him to a free woman, or if he had ordered him to put phylacteries on his head, or to perform any other religious ceremony which a slave was not expected to practice. By these acts the master implied that he had freed his slave (Gittin 39b; 40a).

According to the Biblical ordinance, a slave who escaped from a non-Jewish master to a Jew was not to

be returned into servitude. But the Rabbis extended this privilege also to the slave who had escaped from a Jewish master living in any foreign country to Palestine. If one sold his slave to a non-Jew he was obliged to pay the amount of his ransom and let the slave go free. Likewise, if one mortgaged his slave, to a Gentile he was obliged to pay his debt to the creditor, and set his slave free. If a slave has been captured in war and subsequently managed to escape, he was to go free (Gittin 37 a). A slave who escaped from abroad to Palestine was not to be returned to servitude (Gittin 45a). A slave who was sold from Palestine into some foreign country was to be freed, and the buyer was obliged to stand the loss (Gittin 44 b; 45 a). A slave also had the right to refuse following his master from Palestine to any foreign country. In a case such as this, he was permitted to stay where he was and became free (Ketubot 110b).

That the Rabbis, in ruling as they did in the above mentioned and similar cases, were led by a religious motive in addition to a humanitarian one, is not altogether improbable. Doubtless, the Rabbis considered it religiously improper to sell a slave from Palestine into a foreign land, or to sell a slave to a non-Jew. But the religious motive in itself would not have been sufficient reason for ordering the master to free his slave following upon such a sale. The Rabbis could have ordered the sale annulled, and permit the slave to stay where he was. But the Jewish jurists were supremely anxious to find means for diminishing slavery, and did not permit any opportunity to go by for the accomplishment of this end.

The following instance will illustrate how far the Rabbis sought to defend the slave, and to assist him in gaining his freedom:

A question arose among the Rabbis in the case of a slave who had acquired title to half of his freedom (as for example, a slave held in joint ownership by two

masters and had been freed by one). The school of Hillel was at first inclined to rule that the half-slave work successively one day for his master and one day for himself. This arrangement would be just according to the civil law, for to own a slave means to enjoy the product of his labor. In this particular case, therefore, where there were two owners of the slave, the master as well as the slave himself, the product of the slave's labor should be equally divided.

The School of Shammai, however, pointed to the fact that such a arrangement would indeed provide well for the master but would make but poor provision for the slave. The latter would be much wronged by such an arrangement, because it failed to give him any definite status in society. For as a result of this arrangement he would have neither the advantages of a freeman nor the privileges of the slave. He would not be permitted, to take an instance, to marry a slave, nor would he acquire the right of marrying a free woman. In this way he would be deprived of the inalienable right of founding a family. In consideration of these arguments, the school of Hillel agreed with the school of Shammai that the master be compelled to give the slave a bill of freedom, and receive from the slave a note for the amount which would be due to his shares (Mishnah Gittin 41 a; Eduyot I, 13).

The Rabbis, in this instance, took cognizance of the fact that according to the strict application of the law, his partnership would give the master the right to continue his partial ownership in the slave and to share the products of the slave's labor indefinitely. They decided, however, that the master be compelled to consider the slave as a human being in possession of certain defined inalienable rights, so that for the sake of the slave's well-being, the master must forego his undisputed right of continuous partnership and grant the slave his freedom.

It is also interesting to note that the Talmudic law granted to the freed slave all the religious and civil privileges and immunities that the Jews of that time enjoyed (Gittin 43 b). Even a woman from the best Jewish families was permitted to marry a freed slave (Kidushin 72 b). A freed slave was expected to observe the religious duties of the Jew, even those from which he was freed in his state of slavery. The Rabbis sought to have the slave consider himself as one of the community and to forget entirely his previous state of servitude (Sifra B. 23.42).

3. The Treatment of the Slave.

It was the duty of the master to circumcise the slave and to make him enter into the covenant of Abraham. This was performed not by force, but by moral suasion and for the benefit of the slave. The Jews were not as a rule anxious to force their religion upon others (Yebamot 47 b). But it was to the interest of the slave to enter into the covenant of Abraham. The standing of the slave rose considerably by this action alone, as he was henceforth considered as a member of the family. Besides, this act usually resulted in more intimate relations between him and his master (Yeba. 48a).

The Rabbinic law does not make it obligatory upon the master to feed his slave. The Rabbis probably considered such a law superfluous, for the slave was the property of his master, and no sensible man would permit his property to deteriorate and thereby impair its value. But there existed a moral law which obliged the master to provide the slave with proper food and other necessities of life (B Kama Jerushalmi VIII, 4).

The law provided, however, that in time of famine or dearth as a result of a bad crop, the master was obliged to permit the slave to work for his own benefit, if he did not wish to feed him. The Rabbis realized that under

such circumstances the master may not care to feed his slave even if by so doing he did impair his value, and they therefore compelled the master to permit his slave to shift for himself in this emergency. If the slave worked for his master, the latter was obliged to pay him for his work. This practically meant that the master was obliged to grant his slave temporary freedom (Gittin 12).

According to the civil law the master had a right to compel his slave to perform the most difficult labor. The moral law, however, required of the master to be merciful to his slave, and not overwork him. The moral law also required the master to feed the slave the same kind of food and drink of which he himself partook. The master was also morally prohibited from insulting the slave, or to humiliate him in any way (Niddah 47b).

III—JEWISH SLAVES

1. How the Rabbis Sought the Freedom of the Jewish Slave.

There were actually no Jewish slaves during the Talmudic period. Jewish slavery was not uncommon during the period of the first commonwealth, and also for a short period after the return of the Jews from Babylonian exile (Jeremiah 34; Nehemiah 5). Later it became rarer and rarer, so that the authorities of the Talmud were of the opinion that it became obsolete as early as 735 B. C.. when the Jubilee was abolished (Arakin 29a, 32b; Kid. 69a). According to the Biblical law, a Jew who was sold into slavery was to be freed in the seventh year. If, however, the slave did not care to become free but preferred to remain in servitude, he was allowed to do so and to serve his master until the year of the Jubilee, when he was to be freed, even if against his wish, according to the Rabbis who so interpreted the word "leolom,"

for ever (Exod. 21. 1-6). With the abolition of the Jubilee, Jewish slavery bade fair to become a permanent institution. This was, of course, altogether opposed to the Jewish spirit, and the sages decided, therefore, that Jewish slavery should be abolished, together with the abolition of the Jubilee.

The Talmudic laws regarding Jewish slavery are, therefore, merely a matter of theory. Nevertheless, it is entirely interesting for us to know exactly what were the theoretical principles of the Rabbis for the protection of the Jewish slaves.

The Biblical permission given to the poor Jew to sell himself into slavery was much restricted by the Rabbis, in order to diminish slavery as far as possible. According to the Talmudic law one was not permitted to sell himself as a slave in order to keep his property, real or personal, to purchase with it merchandise, necessary implements, or even to pay a debt with. A Jew was permitted to sell himself only in order to release himself or his family from starvation and even then only when he had nothing else left to sell excepting himself (Kidushin 20a; Arakin 30b).

According to the Biblical law, a court of law was permitted to sell a thief as a slave in order to pay for his theft. The Rabbis, however, wanted to restrict this power of the courts, and enacted a law, which permitted the court to sell a thief only if he was unable to pay the value of the stolen article. If he was able to make restitution but was unable to pay double, as the Biblical law required, the thief was not to be sold (Kidushin 18a). The Rabbis also prohibited the courts from selling the thief to a non-Jew of a foreign land. Furthermore, the Rabbis permitted the court to sell a thief only when his value as a slave was equal to the amount of the theft (Kidushin 18a). By this latter provision the Rabbis rendered the selling of a thief by court order almost

impossible, for it was very difficult to find a case wherein the value of the thief as a slave should equal exactly the value of the article stolen by him. The law also entirely prohibited the selling of a woman for theft (Sotah 23b).

According to the Bible, if a slave refused to go free in his seventh year, he should remain a slave forever (Exod. 21. 5-6). But the Rabbis interpreted it to say that this meant only until the year of the Jubilee, when the slave would be freed automatically (Kidushin 15 a).

There were three ways by which a Jewish slave could obtain his freedom:

(1) On the seventh year.

(2) In the year of the Jubilee; and

(3) By ransom.

It would seem from the Biblical ordinances that the privilege of freeing himself through ransom was granted only to the slave who had been sold to a non-Jew. But the Talmudic law granted the same privilege also to the slave of a Jew (Kidushin 21). The slave is obliged to pay for his freedom, just as much as was his least value at any time. If, for instance, the value of the slave had increased since his selling, he was expected to pay only the sum that his master had paid for him and no more. On the other hand, if his value had since diminished, he was to pay to the master only the sum of his present value (Kidushin 20b; Arakin 30 b). The money for his ransom usually was provided by the slave's friends or relatives, or by his wife and children, which latter relatives the master was obliged to feed and clothe, but whose earnings belonged to themselves.

If the master had died without leaving any sons, the slave was to become free. The slave was not obliged to serve the daughters of his master, or brothers of the

master, to say nothing about other heirs. If the master was a non-Jew, the slave was freed in case of the master's death, even if he left male children (Kidushin 17 b; B.Mezia 71a). All these laws bear evidence of the fact that the Rabbis always sought for an opportunity to free the Jewish slave.

2. The Legal Standing of the Jewish Slave.

The legal position of the Jewish slave was the same as that of the hired laborer or the artisan. The slave retained all his civil rights. The master had no right whatever over the person of the slave, nor could he sell him to anyone else (Arakin 28 a). Anything given to the slave, or found by him, or inherited by him, or earned by his wife and children, belonged to him and not to his master (B.Mezia 12 a). The slave may sue his master for injury, for mistreatment, or for insult, and obtain a verdict against his master (Baba Kama 87 a). The master had only a claim upon the working capacity of the slave. He could not, however, compel him to perform any degrading task (Sifra 25, 109).

The master was obliged to provide the wife and the children of the Jewish slave with food and other necessities even though they were not slaves, and their earnings consequently belonged to themselves (Kidushin 20 a).

According to the Biblical law, the master was permitted to give into marriage a non-Jewish maiden to his Jewish slave, and their children belonged to the master, and were considered as his property even as non-Jewish slaves were (Exodus 21.4). This ruling was in accordance with the law, for the children of a common-law wife belonged to the mother, and as the mother could not own any property, being herself the property of her master, her children consequently belonged to her master. The Talmudic law, however, interpreted this to mean that

this right be granted to the master only when the slave was sold by the order of the court and not in any case, when the slave had sold himself, and provided also that the slave was a married man and a father of children (Kidushin 20a). The reason for this provision probably was that a married man and the father of a family would not suffer very much when he would, at the end of his term of servitude, be called upon to part from the common law wife given to him by his master, and from the children born from her, as he has another, legally married to him, wife and children. But if the slave was single before his master had given him his maid to wife, he would certainly suffer greatly when the time came to part from her and her children, so that the rabbis prohibited to the master the marrying of his non-Jewish maid to his unmarried Jewish slave.

3. The Treatment of the Jewish Slave.

In the days of the Talmudists slaves were sold publicly in the slave markets. The Rabbis, however, prohibited the purchase of a Jewish slave in public. Even the thief who was to be sold by the court order, had to be sold privately, in order not to degrade the unfortunate Jew (Sifra Behar VII, ed. Weiss).

The master was not permitted to overwork the Jewish slave. He was prohibited from ordering the slave to do any unnecessary tasks, even such trivial tasks as warming or cooling water that was not for immediate use. He was also forbidden to order the slave to do a certain kind of work for any unlimited space of time.

The master was also prohibited from ordering his Jewish slave to do the special work of a non-Jewish slave, as for instance, to carry his master's clothes to the bath house, to take off his shoes, etc., although one was permitted to hire a Jew to do for him all these and similar services. The reason for this prohibition, as expressly

stated by the Rabbis, was that the laborer who undertook to do such work in the status of a freeman would not feel degraded by it, whereas the slave, who had no free choice left him, would feel humiliated if he were obliged to perform such menial services (Torath Kohanim, Behar; Mekilta, Mishpatim).

It was the duty of the master to give to the Jewish slave and to his wife and children the same food and drink of which he himself partook. The master was not to eat white bread while the slave ate black bread. The master was not to drink wine which had aged while the slave drank new wine that had not yet acquired any flavor; nor was the master permitted to sleep on a feather bed while his slave slept on a bed of straw. The master was not permitted to live in the city while his slave lived in a village, or vice versa (Kidushin 20a). The master could not insult his slave, and was also required to address him as an equal (Sifra, Behar VII, ed. Weiss). Not in vain is there a saying in the Talmud that, "he who bought a Jewish slave bought a master for himself," (Kidushin 20a). The Rabbis probably felt that they had gone a little too far in their regulations regarding the protection of the Jewish slave, but they also realized the fact that the master always was the stronger one and always had the advantage over the slave, and in order to make the relations of the two more equitable, they laid especial stress upon the protection of the weaker class against the stronger one. They did not, however, overlook the necessity to impress upon the slave the obligations to know his proper place and to endeavor to discharge his duties in full to his master (Sifra, Behar VII, ed. Weiss).

The Rabbis provided for the Jewish slave's welfare not only during the period of his servitude, but also looked after his future. They realized that, having no property, the economic situation of the Jewish slave after he had

been freed would be grave indeed and they provided in advance for this contingency. The Biblical law obligated the master to reward his slave at the time when he was freed from slavery. This regulation, however, is entirely indefinite, and the master could easily enough rid himself of it by the payment of a very insignificant amount. The Rabbis therefore, set up a definite amount for this bounty, in order that the slave should after obtaining his freedom, have some means of obtaining a livelihood as well (Kidushin 17 a).

The protection and the treatment of the woman slave, who was permitted to be sold as a maid only before she had reached maturity, will be described in the following chapter on minors.

IV—MINORS

1. The Duty of Supporting Minor Children.

No ordinance is found anywhere in the Bible imposing on the father the duty of supporting his minor children. Such a provision was however entirely unnecessary. Parents always supported their children as a matter of course. This function was deeply rooted in the minds of the parents as a natural duty, so that there was no necessity for its legal sanction and enforcement (Ketubot 49a).

In course of time, however, conditions changed, and people here and there began taking advantage of the absence of any specific law to that effect. In the time of the Hadrianic persecutions, when economic and political conditions became very bad, fathers sometime would refuse to support their children. The Talmud, therefore, found it necessary to enact a special law, which made it obligatory for the father to support his children at least until they were six years of age.

The Sanhedrin that met in Usha found it necessary to impose a legal obligation on the father to support his children even after six years of age, but this was not generally accepted (Yerushalmi Ket. IV-8). The duty of supporting all children until six years of age applied equally to one' illegitimate issue (Yebamot 22a).

The obligation to support minor children was incumbent only on the father, for the mother was just as helpless as the minor children themselves, the both of them being dependent on the good will of the father and husband. Nor was the wife's status changed after the death of her husband, for, while the minor sons then automatically became the owners of the estate of their father, the woman's dependence continued as heretofore.

There is, however, one provision specially imposed on the mother and that is the protection of her infant child. A widow was not permitted to marry within twenty-four months after the birth of a child, for, should she become pregnant, she might thereby be rendered unfit to suckle her infant, and her second husband might be unwilling to provide for its rearing by any other means (Yebamot 42 a).

A father, as above stated, was obligated to support his children up to six years of age, (Ketubot 65a), yet while the Rabbis did not care to impose any legal obligations on a man for the support of his children after they reached this age, they took great pains to influence him in doing so on purely moral considerations. They declared that to support one's children was tantamount to doing continuous charitable acts (Ket. 50a). They also employed the power of public opinion to attain this desired result. Sometimes they would even denounce publicly those who declined to comply with this moral duty Ket. 49b; Ket. Jer. IV. 8). The Talmud declared further that the absence of any legal ordinances for the father to support his children after the age of six, applied

only in the case when the former was poor, but when the father of the children was rich, he could be compelled to do so as a matter of charity (Ket. 49b).

The earnings of children who were supported by their father belonged to their father. But, according to the law, the children always had the right to refuse the support of their father and retain their earnings for themselves (B. Mez. 12b).

2. The Posthumous Duty of Supporting a Minor Daughter.

The earliest mention of any positive response to the obligation to support one's minor children is to be found in connection with the posthumous minor daughter. This was the natural result of circumstances. The property of the father was, in accordance with the Biblical law, inherited by the male children only, while the female children were left totally at the mercy of the male children. In the event of the male children's refusal to support their sisters, the latter would be rendered entirely destitute. Therefore, it was found necessary at a very early time to make it a provision of the marriage contract (Ketubah) that in the event of the husband's death his female orphans should be maintained from his estate until they are married (Yer. Ket. IV 12; Mishnah Ket. 52b).

The provision must not necessarily be written into the contract, for it is binding on the husband not by virtue of the contract in which it is entered, but by virtue of its being a court enactment which one tacitly accepted at marriage (Ket 52 b). This enactment was a great reform in itself, for it quite often, and contrary to the Biblical law, made the female instead of the male children the real heirs of the father's property. That this was a very early enactment can be seen from the fact that the

Mishnah does not speak of it as an innovation, but as an old tradition.

The support of one's daughter out of the property of her father after his death was not in the nature of the fulfillment of an obligation towards one's children, but rather toward one's wife. The daughters derived this right through the express or implied contract given to their mother. That this provision should come to be looked upon as imposing on the father a duty not towards his children, but rather towards the wife, is due to the fact that it was primarily the woman who suffered if her daughters were rendered indigent by the death of her husband. Her own condition was deplorable enough, and she, no less than her daughters, was dependent on the good will of her sons. Her struggle for existence was however bound to become still harder by the lack of any solid basis for the support of the female orphans. In course of time, many enactments were made for the amelioration of the conditions of the widow. But even so she would certainly not have been entirely relieved had the orphaned daughters not been provided for. Thus it came to pass that the duty of supporting his daughter was classed among the duties of a husband towards his wife. We are, however, justified in treating this subject here, since the female children became the direct beneficiaries of this ordinance.

If the property left by their father was not sufficient for the support of both the male and female orphans, then the entire property must be given to the females (Ket. 108 b). This was the climax of the rabbinical reform, for in this instance the females became the practical heirs of their father's estate, quite contrary to the Biblical law which declared that inheritance was the exclusive right of the males.

It is indeed true that theoretically the males still were the heirs, while the females became the possessors of

the property only through a contractual obligation. This instance clearly illustrates the general principles in the development of the Jewish law. While no law was directly abolished, means were found by which these same laws were made inoperative.

3. The Mi'un Institution.

The reform instituted concerning the support of a minor daughter after her father's death did not seem to protect her fully in all her rights. It would seem that certain unknown circumstances arose which rendered unsafe the chastity of minor daughters (Yeb. 112 b. see Rashi). This condition gave rise to another great reform, which later developed into an established institution in Jewish life.

According to the Biblical law, only a father had the power to give his minor daughter in marriage. In order to remedy the evils spoken of in the last paragraph, the Rabbis instituted that the mother or the brothers of the minor female might secure the protection of a husband for her by giving her in marriage. This was not entirely an innovation. The giving of a minor daughter in marriage by her mother or brothers certainly did not originate in an enactment of the Rabbis, but existed as a frequent practice among the people, to which practice the Rabbis readily gave their sanction.

But this power of the girl's mother or brothers was different from the similar power exercised by her father. The power of a father to give his minor daughter in marriage was considered as his exclusive right, and, therefore, he needed not to consult his daughter when wishing to exercise it. But the law giving the brothers and mothers this same power was established primarily for the benefit of the minor. This law intended, then, to secure a new privilege neither to her mother nor to her brothers, but to the minor orphan. Consequently, a mother or

brothers could exercise the power of giving the orphan daughter in marriage only after they had obtained her consent to it (Jer. Yeb. XIII 2).

But, while this reform brought protection and even happiness to some orphans, it certainly marred the happiness of others, since the females who entered in such marriages were of an age at which they did not have sufficient intelligence for making a proper choice. To offset this evil, another institution arose, which no less than the provision for the giving of a minor daughter in marriage by her mother or her brothers, was a reform of post-Biblical times. This institution is spoken of by the Rabbis as Mi'un, meaning refusing or objecting, and consisted of the power the minor female orphan possessed of invalidating the marriage contracted for her either by her mother or her brothers (Eduyot Ch. VI, Act 1). Mi'un, as we shall see later on, was different from, and did not call for any bill of divorce. It was simply an objection made on her part to the living any longer with her husband, the procedure of which was marked by very few formalities.

The inauguration of this institution would involve, it appears, a qualified disregard of certain Biblical rules:

(1) According to the Bible, a separation between a wife and her husband could be brought about only by the expressed will of the latter, and could be effected only by a certain process in which he formed the main factor. In the case of Mi'un, however, the invalidation of the marriage was caused by the will and the action of the wife alone.

(2) The method of procedure in Mi'un was totally different from divorce procedures.

(3) According to Biblical prescription, the action of a minor in matters requiring intention or intelligence, was invalid. According to one rabbi's opinion, a minor could

not even become the passive recipient of a bill of divorce given to invalidate a marriage contracted for her by her father (Eduyot Ch. IV). And yet, the practice of Mi'un is not to be considered either as a violation of the Biblical law, or as a substitution for the bill of divorce. It was the Rabbis who acknowledged the validity of the marriage of a minor daughter after her father's death, and it was the rabbis again who possessed and exercised the power of providing the means for invalidating this same marriage (See Yer. Yeb. XIII, I).

The Rabbis also provided ample protection for the minor daughter in cases of seduction and debauching. The Bible enumerates two forms of debauching women:

(1) By violence, and;

(2) By seduction.

In the case of violence, the wrongdoer was compelled to marry the injured female whom he could never thereafter divorce, and was also required to pay fifty "shekels" to her father. In case of seduction, he was not obliged to marry her, but was required to pay the fifty "shekels." The fine was remitted if he married the injured party. In the Mishnah this fine was increased. In case of seduction, the Mishnah provided that the wrongdoer was to pay for the disgrace which she had sustained, as a result of his act, for the decrease in the value of her person, all of this in addition to the fixed fine of fifty "shekels." In case of violence, he was also to pay for the pain that she had suffered (Ket. 39a). This enactment shows a desire on the part of the Rabbis to protect the minor, though the fines belong to the girl's father.

4. The Status of the Maid Servant.

A father had the right to sell his daughter as a maid, "Ammah" (Exod. 21, 7). Her master usually bought her with the object of either marrying her himself (Exod.

21.8), or of marrying her to his son (Exod. 21.9). The Bible probably permitted a father to sell his daughter when this proved to her own benefit. This right of a father, however, when misused, could easily have become a menace to the minor daughter, so that the Rabbis took great pains in protecting her in every possible way.

According to the Talmudic law, the right to sell his daughter was granted to a father only in cases of extreme poverty (Kidushin 20 a; Arakin 30 b.), so that just as soon as his financial condition had improved, he was obliged to ransom her. A father was not permitted to sell his daughter twice (Kidushin 18a). Neither could he sell her after she had reached physical maturity, ordinarily at twelve years of age (Kidushin 18a). The Rabbis also prohibited the sale of a minor daughter to one who was unable to marry her himself and had no children who could do so (Kid. 20a).

If a father had sold his minor daughter on condition that the master should not marry her, that condition was void, it being against the law. The sale of a minor daughter was permitted for her own sake only, in order that she might marry the master or one of his sons, and her father could not make any agreement to the contrary (Kid. 19b).

A father was also prohibited from selling his minor daughter after she had already been married and divorced, or had become a widow (Kidushin 18).

If the master or his son did not wish to marry the maid-servant, she could obtain her freedom by either of the following ways:

(1) On the seventh or the Jubilee year.

(2) By the death of her master.

(3) By reaching physical maturity ordinarily at twelve years of age.

(4) By ransom, and;

(5) By a Bill of Freedom (Kidushin 14b, 16b, 17b, 18 a).

When a maid was redeemed, her master was morally obliged to reward her, in order not to leave her go out of his house without any means (Kidushin 16 b).

In case her master or his son married her, she was to be considered not as a common law wife but as a legal wife and entitled to all the privileges and the immunities of a legally wedded wife.

All the above enumerated Talmudic laws were merely theoretical, as has already been stated (See The Jewish Slaves I). Jewish slavery had long since been abolished and, hence, the right of a father to sell his minor daughter as a maid-servant was doubtless also denied him. But they show, however, how far the Rabbis sought to protect the minor woman. A father, however, still retained his right to marry his minor daughter to whomsoever he wished. But in the later Talmudic period, the Rabbis issued a law prohibiting the father from marrying off his minor daughter without her consent (Kid. 41 a).

5. Sundry Regulations for the Protection of Minors.

(a) Guardians and Their Duties.

A guardian over a minor orphan could be appointed either by the father of the child shortly before his death, or by a court of law (Git. 52a). But in either case the powers possessed by the guardian were limited to those that accrued to the benefit of the orphan. A court exercised control over the guardian and it could, therefore, remove him whenever it found it necessary to do so. It could remove him, when he was found wasting the orphan's property (Git. 52b). It could also remove him if

at any time during his term of incumbency, he lived at an expense higher than that which his own means permitted him, and thus aroused the suspicion that he was misusing the estate of the minor (Git. 52b).

(b) Purchase.

Ordinary or secular purchases were made by means of Meshika, by pulling or removing the article (Kid. 28b). This regulation was made for the purpose of making it obligatory on the purchaser to consummate the sale, after the purchase price had been paid, by moving the article which he had already bought. Meshikah did not however apply to Temple purchases. In the latter case, the ownership of the article bought changed hands by the simple act of payment of the price if the sale would be of benefit to the temple. This provision, as can readily be seen, greatly protected the interests of the temple.

The Jewish law declared that the estate of minor orphans enjoyed the same status as the estate of the Temple with regard to purchase, if it was to their advantage that the sale be consummated by the simple payment of the purchase money. If, however, the interests of the orphan demanded that a purchase made shall become valid only by the act of Meshikah, the estate of the orphan then enjoyed the status of a secular estate, and the mode of transaction was ordered accordingly. If one, however, had bought an article of an orphan the value of which decreased before he committed the act of 'pulling', the purchase was considered as consummated and valid by law (Kid. 29a, Git. 52a).

(c) Debts to Orphans and the Sabbatical Year

According to the Jewish law, all debts are forfeited during the Sabbatical year. Hillel however caused the abrogation of this law by his enactment of the law of the "Pruzbul" (a legal document which the creditor submitted to the court, and was duly signed by this latter body),

by which means the debt was transferred to, and reclaimed by, the court from the debtor.

No submission of a "Pruzbul" was necessary, however, for sums owed to minor orphans. The court assumed the power of action against the debtor, by the simple fact that it was acting in a parental relation to the orphan (Git. 37a; B.K. 37a).

(d) Attachment of the Estate of a Minor Orphan.

An attachment would not be issued against the estate of a minor orphan to pay his father's debts excepting when there was sufficient evidence that the debt had not been paid (Arakin 22 a). This held good only in that case where the father had acknowledged that debt before his death (Arakin 22; B.B. 17), or in the case when the loan had been made for a specified period of time and the debtor had died before that period expired. In the latter case, it was properly assumed that a man does not pay any debt before it is due (B.B. 5 b).

The courts also had the right to issue an attachment in the case where the father of the orphan had been excommunicated, for not paying that debt. Any claim that the orphan's father may have paid his debt was removed in this case by the fact that had he done so, he would surely have done it through the agency of the court, in order to remove the ban from him (B.B. 174b).

With the exception of these three named instances, no attachment was ever to be issued. The reason given by R. Hunah for this rule was, the doubt lest the father of the orphan had paid his debt to the creditor, but that insufficient time had elapsed between the time of payment and the former's death to have the bill recalled from the holder (Arakin 22 a; B.B. 174). Baba went even further and stated that there was always a possibility that the debtor had a receipt for the payment of his debt, but which the orphan could not find.

Under particularly urgent circumstances, an attachment was issued even when there was no absolute evidence that the debt had not been paid. Such as the case in which the speedy payment of the debt would prevent the orphans from suffering any loss, as, for example, when the debt was bearing interest (Arakin 22). As a Hebrew was not permitted to accept interest from a fellow Hebrew, such a case could, therefore, occur only when the loan had been made from a Gentile who had voluntarily submitted to Jewish jurisdiction in everything except the taking of interest (Arakin 22). R. Johanan was of the opinion that an attachment may also be issued for a widow's Ketubah because the orphans of the family were thereby benefited, due to the fact that they would not have to support her in the event of her collecting same (Arakin 22).

The Mishnah rules that all payments were to be made from the poorest portions of the fields inherited by orphans (Git. 48b).

In the Babylonian Talmud, we find the question raised as to whether this ruling applied also to the estate of orphans after the age of maturity and an affirmative decision was given (Git. 50). But the Palestinian Talmud ruled expressly that it applied only to the estates of a minor orphan (Yer. Ket. IV, 7; Git. IV, 2).

V—WOMEN AND THEIR STATUS

1. The Protection of a Woman Against Her Husband.

According to the Biblical law, the duties of a husband to his wife consist of just three actions:

(a) To provide her with necessary food.

(b) To provide her with clothing, and

(c) To fulfil his marital obligations towards her (Exod. 21.10).

The Rabbis, however, added seven more duties to this list. These are:

(a) To settle upon her a stipulated amount of money in the event of her divorce by or the death of her husband, as was provided in the "Ketubah", (the marriage contract).

(b) To provide for medical treatment of his wife in case of her illness.

(c) To ransom her if captured.

(d) To provide the expense of her funeral.

(e) To provide for the support of their unmarried daughters, who according to the law, did not participate in the inheritance.

(f) To provide for her support after his death, and

(g) To permit the wife's sons to inherit the sum settled upon her by the Ketubah, over and above what they would inherit together with their brothers from other wives in their capacity as sons of their father (Ket. 46; 47; 48; 51; 52). This prescription simply meant that the protection enjoyed by the woman was extended also to her children, in order that she should not be made to suffer on account of them.

One of the most important means evolved for the provision of the support of the woman was the "Ketubah". This was a document that was in the nature of a marriage settlement, whereby a virgin was to obtain 200 "Zuz", and a widow 100 "Zuz", in case of divorce or the death of her husband. This regulation was enacted by the Rabbis in order to provide for the divorcee, and the widow when they had nobody to look to for support. Usually the "Ketubah" was written before the marriage, and was read at the wedding. According to the Talmud-

ic law, marriage was considered immoral without the previous writing of the "Ketubah" (Ket. 57a; B. Kama 89a).

In course of time, the provisions of a "Ketubah" became self-evident and a mere matter of form and it was binding on the husband even if he did not sign the written document.

If a widow did not make demand for her settlement under the "Ketubah" and she did not remarry, she was to be supported from the property of her husband (Ket. 52b; 54a). The support given by a husband to his wife was to be in accordance with his own and her standing in society, but a minimum scale was fixed even for the very poor (Mishnah Ket. 64b).

A woman who was supported by her husband was expected to do the housework in case her husband's means do not permit him to employ servants. The Rabbis, however, obliged the man not only to share with his wife in the housework but to perform the more difficult tasks and let his wife do the easier tasks (Mishnah Ket. 61a).

If a woman wished to remain independent, i.e., not to be supported by her husband and to retain the profits of her work for herself, she was permitted to do so. The obligation placed upon a husband to support his wife was enacted by the Rabbis for the sake of the protection of the average woman, who usually was unable to support herself by her own work. If, therefore, a woman found that the provisions of this enactment would not accrue to her benefit, she may refuse to be governed by it (B. Batra 49 b).

Although as a rule the woman was dependent on her husband for support, the latter had no right whatever over the person of his wife. Accordingly a man is responsible for any bodily injury caused by him to his wife (B.Kama 32a). The principle of the law was that the

wife was to share all the privileges and immunities of the husband and not be made to suffer on account of any of his disadvantages (Ket. 48b; 61a). A wife enjoyed complete freedom and her husband had no right to compel her to change her habits, customs, or manners. Neither was a husband permitted to force his wife to change her residence from the city to a country place, or vice versa, if this happened to be opposed or contrary to her accustomed way of living. Nor could he compel her to leave her native country and follow him to another land unless he comes from abroad and there was an understanding at the time of the marriage that she would follow him to his own country (Ket. 106a).

There were, however, exceptions to these laws. A wife was obliged to follow her husband from any country to Palestine, and from any city or town in Palestine to Jerusalem (Ket. 110b). The same privilege, however, was also granted to the woman, who could compel her husband to follow her to Palestine or to Jerusalem (Ket. 110b).

No husband was permitted to force his wife to change their common dwelling, even though the proposed dwelling might be a better one, because the wife cannot be compelled to assume the severer duties involved in attending to a better dwelling. It seems that the woman alone could decide upon any change of dwelling for the family (Ket. 110b).

To what extent the Rabbis sought the material protection of the woman may be especially seen from the following provision: If a woman sold that part of her property known as "mort-main" to her husband, or gave it to him as a gift, she could annul this sale or this gift and retain her property (B. Batra 49b; 50a). The Rabbis realized, that the woman as the weaker sex, usually was under the influence of her husband, and may have entered upon such a transaction as a result of undue in-

fluence used by him, and therefore saw fit to annul this act. For the same reason, they decreed that if the man has sold or conveyed as a gift the property of his wife to someone else, the transaction is void, even though the woman has formally given her consent to it. In such a case the woman may claim that she had given her consent to the transaction merely to please her husband, but had never thought of selling or conveying her property to anyone else (B.Batra 49b; 50a; Mishna Git. 55b).

The right of divorce was confined by the Bible exclusively to the man (Deut. 24.1). The Rabbis, however, in some instances, gave the woman also the right of compelling her husband to grant her a bill of divorce. If the man is an epileptic, a leper, or is impotent, his wife was permitted to compel him to grant her a bill of divorce. Furthermore, if the man suffered, after marriage, an injury by which he lost a limb, he was compelled, on the demand of his wife, to grant her a bill of divorce. Moreover, a wife had the right to demand a bill of divorce even if there was no particular physical fault in her husband, but if he had engaged since his marriage in a repellent occupation, e.g., tanning (Mishnah Ket. 77a).

According to the interpretation given by Maimonides, Yad, Ishut XIV, 8, of Ketubot 63a, incompatibility of character is sufficient cause for divorce. The Rabbis also compelled a husband to grant a bill of divorce to his wife in the following instances:

(1) For having intercourse with other women (R. Alexander Siskind of Frankfurt, Aggudah Yebamot);

(2) For not supporting his wife (Ket. 77b).

(3) For not fulfilling his marital obligations (Ket. 61 b).

(4) For refusing to allow his wife to occupy his home (Ket. 77b). Comp. Iben Adret, Responsa 693.

(5) For leaving the country for an indefinite period (Ket. 61b; 110b).

2. The Protection of the Agunah (Deserted Woman)

Adultery is considered a criminal offense according to the laws of the Rabbis, based on the Biblical law. Nevertheless, the Rabbis endeavored to find a way to grant to a deserted woman who did not know the whereabouts of her husband, the permission to marry on the slightest evidence of the death of her first husband.

If, for example, one heard children saying that they were going to, or returning from, the funeral of so-and-so, such testimony was deemed sufficient to grant his wife permission to marry another man (Yeb. 121 b. Mishnah). We already know that the testimony of children would not suffice in all other cases. It is possible that a mere off-hand chat of children, in which there was no intention of testifying to anything would be more reliable than their formal testimony. However, one cannot deny that it was a great reform on the part of the Rabbis to permit a married woman to re-marry on the basis of mere children's gossip that they had attended or were going to attend the funeral of that woman's husband.

If a woman had followed her husband abroad and after a while she returned and testified that her husband had died, she was permitted to re-marry on the basis of her own testimony. Likewise, if there was one witness, even an indirect one, who had heard from someone else of the death of that woman's husband, even if the witness was a slave, the Rabbis permitted this woman to remarry on the basis of such testimony. In other cases, the testimony of one's self, or the second-hand testimony of a slave, was not considered competent, but in this instance the Rabbis made an exception, in order to give the woman an opportunity to remarry, even though the act of cohabitation of a married woman with more than one man was punishable by death (Yeb. 117-

122). The Rabbis thoroughly realized the hard life of the deserted woman and the widow and endeavored to protect them.

The Rabbis also extended their protection to the widow debtor to shield her against her creditors. The Bible prohibited to the creditor the taking of a pledge from a widow-debtor (Deuteronomy 24. 17). During the Biblical period, when the Jews were a peasant folk, a widow usually was a poor woman, the land having descended to the male heirs, and the widow frequently remaining without any means of support. The enactment of the "Ketubah" took place in the Post Biblical period. Consequently, the Biblical law prohibited a creditor the taking of any pledge from a widow, who most likely was borrowing money from him for her support, or the support of her minor daughters. But the Rabbis extended this law to apply even to a rich widow, probably for the mere sake of protecting the weaker sex, and the weaker class of society (Mishnah B. Mezia 115a).

The Rabbis realized also that a woman was more susceptible to shame than a man. For this reason, it was enacted that if a man and woman were made captive, and there was a possibility of ransoming only one of them, the preference was to be given to the woman. Likewise, if a man and a woman were both in need of food or clothes, and there was a possibility of helping only one of them, the woman had the preference over the man (Horiot 13 a), for a woman felt greater humiliation than a man when compelled to apply for charity.

VI—DEBTORS

1. Interest According to the Talmudic Law.

(a) Indirect Interest.

The law prohibiting usury is based upon the following verse of Pentateuch (Lev. 25. 37). "Thy money shalt

thou not give him upon usury, nor lend him thy victuals for increase."

Usury as prohibited by the Pentateuch is "direct" or "express" interest, but the Talmudic interpretation includes also "indirect" interest, i.e., the law of Moses prohibited the making of any loan when effected by the parties with the express understanding that the lender shall receive some compensation for the loan, while the Talmud forbade any transaction or deal which, though legitimate in its inception, may ultimately develop into a usurious transaction (Mishnah B. Mezia 59b; Gemara 62-4-6).

A person was, for instance, prohibited from giving his merchandise to a shopkeeper to sell under a contract that the gross profits, i.e. the difference between the wholesale and the retail price, should be divided equally between them; nor may a person give the shopkeeper money wherewith the latter was to buy merchandise at wholesale and then sell the same at retail and divide the profits between them, unless the shopkeeper is compensated for his trouble (Mishnah B. Mezia 68a).

These transactions are prohibited by law as usurious, for the reason that the retailer in all such cases assumes the responsibility of a borrower to the extent of one-half the value of the merchandise in case of loss, while as regards the other half he is considered a bailee (Gemara B. Mezia 104b). It consequently comes down to this that because the owner had lent one-half of his merchandise to the retailer, the latter, in consideration thereof, undertakes to sell the other half of the merchandise belonging to the former. In other words, the owner of the money gets the benefit of the retailer's labor as compensation for his loan (Rashi to Gemara B. Mezia 68a). Such a transaction is, therefore, permitted only when the retailer is compensated for his work (Gemara B. Mezia 68b).

(b) "Dust of Interest" (Abak Ribit).

If one selling his field says to the grantee: "If you will pay me for it now, you can have it for one thousand 'zuz'; but if you will pay me for it at harvest time, you will have to pay for it twelve hundred 'zuz' "—this is prohibited (Mishnah B. Mezia 65a). In a case such as this, according to the interpretation of the Gemara (B. Mezia 65 a), the buyer, upon the delivery of the article sold, must immediately pay the purchase money agreed upon at the time of this sale. If he does not pay the purchase money then such sum becomes a debt. Now, the grantor is selling his field for one thousand "zuz" on condition that the grantee would pay immediately upon the delivery, but if the grantee does not pay then, he will have to pay for the field twelve hundred "zuz". The terms of such an agreement clearly indicate that the field sold is of the value of a thousand "zuz" only, and that the two hundred extra "zuz" are charged to the grantee by the grantor solely for the privilege granted to him of not paying the entire purchase price that is due immediately. The making of such an agreement is therefore prohibited by the Rabbis as usurious, for it is, as the Rabbis call it: "Dust of Interest" (B. Mezia 65a).

(c) Evasion of the Law Against Interest. (Haaramat Ribit).

'If A lends B wheat worth one hundred 'zuz' and the lender buys back the same wheat from the borrower for 90 'zuz', this is prohibited" (Beraita B. Mezia 62b). This is not usury pure and simple, for the amount of wheat that A had lent to B really was worth one hundred 'zuz'. But B needed money and had no time or desire to look about for a buyer, so that he was willing to sell back the wheat to A for ninety 'zuz'. Though the original transaction—the lending—was not conditioned upon the second transaction—the selling, and thus the selling of

the wheat at a low price was not directly a reward for the lending of the wheat, the Rabbis, nevertheless, prohibited it as "tricky" interest.

(d) The Resemblance, or Similitude, of Interest.

A creditor is prohibited from living in his debtor's court-yard gratis, or even living there at a reduced rental (Mishnah B. Mezia 64b). By this, according to the interpretation of the Gemara, (B. Mezia 64 b) is meant, that the lender is not allowed to occupy the borrower's court-yard even in the case when such court-yard is vacant, the owner having no intention of letting the same or of realizing anything therefrom, and the lender not being benefited by such occupation, because he has a court-yard of his own. This is prohibited for the reason that it will appear as a usurious transaction to those who are unfamiliar with the facts of the case (Rashi on Gemara, B. Mezia 64 b).

(e) Words as Interest.

Rabbi Simon says that there is a kind of usury which consists of mere words, as when a debtor says to his creditor: "I hereby inform you that such and such a person has arrived from such and such a place" (Mishnah, B. Mezia 75 b). This, of course, is forbidden only when such information is given either by reason of some past loan, or in consideration of a future loan now contemplated to be made, and that no such information would have been otherwise given.

From this, it would appear that if there was any compensation at all given in return for a loan, the loan was considered as tainted with usury.

(f) Multiple Transgression.

It is not only the debtor and the creditor that transgress the negative injunctions relating to the taking of usury, but also the surety, the witnesses, and even the

one who writes the contract, as well as the agents (Mishnah B. Mezia 75b; Gemara B. M. 62a). All these men, according to the Rabbis, are equally responsible for the violation of not only one injunction, but of the violation of all the following commandments: "Thy money shalt thou not give him upon usury" (Lev. 25. 37); "Thou shalt not take of him any usury" (Lev. 25. 36); "Thou shalt not be to him as a lender of money" (Ex. 22. 24); "Thou shalt not lay upon him any usury" (Ex. 22. 24) and "Thou shalt not put a stumbling block before the blind; but thou shalt be afraid of thy God; I am the Lord" (Lev. 19. 14), (Mishnah B. Mezia 75b).

(g) Non-Israelites.

It is written in the Pentateuch (Deut. 22. 21) "From an alien thou mayest take interest, but from thy brother thou mayest not take interest." The reason that non-Israelites are, in certain instances, excluded from the benefits of the Jewish law is that there is in their case a want of mutuality. Among the Jews' neighbors, the taking of interest was an absolutely legitimate procedure, and an action at law could be maintained by the lender to recover the money lent as well as the interest accrued thereon (B. Mezia 62 b).

The Jewish jurists have followed, therefore, the law of Pentateuch, in permitting a Jew to take interest from a non-Jew, but they have likewise made it legal for a Jew to pay interest to a non-Jew (Mishnah and Gemara B. M. 70b).

2. Pledges.

The rules of protection for the debtor with regard to pledges are based upon the following Biblical verses: "When thou dost lend thy friend any manner of loan, thou shalt not go into his house to fetch his pledge. Thou shalt stand without, and the man to whom thou dost lend shall bring forth the pledge without unto thee. And if he

be an 'ani' (a poor man), thou shalt not sleep with his pledge, thou shalt surely restore to him the pledge when the sun goeth down, that he may sleep in his garment, and bless thee; and it shall be righteousness unto thee before the Lord thy God" (Deut. 24. 10-14). "If thou take at all thy neighbor's raiment in pledge, thou shalt restore it unto him by the time the sun goes down; For it is his only covering, it is his raiment for his skin; wherein shall he sleep? And it shall come to pass, when he crieth unto me, that I will hear; for I am gracious" (Exod. 22. 25-27). These commandments were interpreted and expanded by the Talmudists as follows:

If A lent money to B the same to be paid at a certain fixed time, and if the debtor did not pay the sum when due, the creditor then had the right to take a pledge from the debtor in order to secure the payment of the debt. But the creditor could not take such pledge without previously obtaining a court order to that effect, and the order had to be carried out by an officer from the court (Mishnah B. Mezia 113 a). Furthermore, the court officer was not permitted to enter the debtor's house to take the pledge, as it is said (Deut. 24. 11): "In the street shalt thou stand and the man whom thou doest lend shall bring out unto thee the pledge into the street."

It appears from the above passages that the Biblical law did indeed give the right to the creditor to exact a pledge from his debtor in order to secure the debt, provided he did not enter the debtor's house, i.e., if he did not take it by violence, but took it with the consent of the debtor. But the Rabbis made it necessary for the creditor to obtain an order first from a court, and even then the court officer could not take the pledge himself but the debtor had to bring it out to him willingly

The pledgee was obliged by law to return the object taken as a pledge whenever it was needed by the pledger to make use thereof. The pledgee, for instance, had to

return to the pledger the pillow for the night and the plough for the day (B. Mezia 113a). Of course, all these regulations applied only in the case where the pledge was exacted after the loan had been made, but not if the loan had been originally made on the security of a pledge which the debtor had brought himself to the creditor (B. Mezia 114b).

According to the Biblical law (Exod. 22. 25; Deut. 24. 6), the creditor who took millstones as a pledge was guilty of violating one negative commandment, but according to the Rabbis, he was guilty of violating not one but two negative commandments, one for taking the nether and one for taking the upper stone, even if he took both of them at one and the same time (Mishnah B. Mezia 115). The aforesaid rule applied, according to the Talmud, not only to millstones but to any implements wherewith life-sustaining food was produced (B. Mezia 115; Makoth 17).

The court officer was not permitted to take as a pledge the most necessary clothes of the debtor, or the set of dishes that he was using. Nor was he allowed to take his only bed or mattress (B. Mezia 113b). Apparel which the debtor bought or prepared especially for his wife or children could not be taken into pledge, even though his wife or children had not worn it as yet (B. Mezia 114a; Arakin 23b, 24a).

It is interesting to note the provision that if one had guaranteed the debt of another, who failed to pay the debt, the creditor was permitted to exact a pledge from the guarantor without obtaining any court order. Furthermore, the creditor was permitted, in order to obtain the pledge from the surety, to enter his home, and did not need to wait outside as is the provision in the case of a principal debtor (Beraita B. Mezia 115a). The reason for this probably is, that the surety was supposed to

be a man belonging to a wealthier class and the Rabbis did not find it necessary to protect him if he had failed to pay on time.

The above law applied also to one who did not pay his laborer's wages on time. The employee was permitted to enter the house of his employer without any court order, and to take a pledge. The Rabbis were very strict in the matter of the payment of wages on time, and did not find it necessary to protect the one who failed to do so. If, however, the employee had agreed that the amount of wages due him shall remain with the employer for a certain period of time, and the employer thereafter failed to pay this sum on the due date, the employee could not exact any pledge from the employer without previously obtaining an order of the court. In such a case, the wages became a debt and the employer a debtor, and the laws protecting the debtor applied to him as to all others.

3. The Release of Debts.

The law of "Shemitah", namely, that the Sabbatical year releases and annuls all debts, is based on the following commandment: "And this is the manner of the release; Every creditor shall release the loan which he hath lent to his neighbor; he shall not exact it of his neighbor, or of his brother" (Deut. 15. 2).

Rabbi, the editor of the Mishnah, says (Git. 36b), that the law of the annulment of debts in the Sabbatical year was not to be applied, in accordance with the Biblical law, after the abolition of the Jubilee, which occured in 735 B.C. (Arakin 29a. 32b; Kiddushin 69a). The Bible speaks of the Sabbatical year in connection with the year of the Jubilee at which time all land conveyances were set aside, and the land reverted to the original owner (Lev. 25. 1-14). By this ordinance the Bible, according to the interpretation of Rabbi, indicated that the release of debts in the Sabbatical year was to be prac-

ticed only at the time when the release of land in the Jubilee year was in vogue. As the Jubilee institution had been abolished long before the Talmudic period, the release of debts during the Sabbatical year was consequently abolished as well. The Rabbis, however, subsequently enacted that the law of the release of debts in the Sabbatical year shall continue even after the abolition of the Jubilee (Git. 36b).

According to the Talmudic law, a law court could not compel a debtor, after the Sabbatical year, to pay to the creditor a loan made before the Sabbatical year, even if this loan was made on a note. An exception was made only in the case of loans made on mortgages and pledges (Git. 37a; Shebeeth X Mishna 2).

It was further provided that even if a creditor had made a loan on the express condition that the Sabbatical year should not annul it, no court could compel the debtor to pay the debt after the Sabbatical year, as this condition of the creditor was contrary to the law, and hence, was not valid. If, however, this contract had been made in such form that the debtor could not repudiate his debt even during the Sabbatical year, the court could then oblige the debtor to pay his debt after the lapse of the Sabbatical year. In such a case, the contract did not constitute a violation of the law, but rather that the debtor had agreed voluntarily to pay the debt from which he was otherwise freed by law (Mak. 3b), and this promise accordingly became obligatory upon him.

The Sabbatical year did not annul the debts which people owed to their tradesmen, nor the debts which employers owed to employees as wages (Mishnah Shebeeth X 1). Likewise the debt that a man owed to his divorcee as the "Ketubah" was not annulled by the Sabbatical year (Git. 18b).

The reason for this is obvious. The aim of the Rabbis, as was also the aim of the Bible, in enacting these laws

for the annulment of debts in the Sabbatical year, was to shield the impoverished debtor. Usually the debtor was a poor farmer or a laborer who had borrowed of his richer neighbor or his employer in order to buy seed, food, or tools and who, in most cases, found himself unable to pay his debt. If he found himself unable to pay his debt before the Sabbatical year, his obligation was annulled as a matter of course. It is understood, therefore, that this privilege ought not to be granted to an employer as against his employees, or to a husband as against his divorced wife, and even not to buyers against the tradesmen who usually were poor people themselves. The case was just the opposite. The Rabbis were always seeking for ways and means of protecting the woman against the husband and the employee against the employer.

For a similar reason, the Sabbatical year did not annul any debts which one had to pay as a punishment for assaulting or debauching a minor, or as compensation for other crimes (Git. 18). No one could really expect the Rabbis to grant special privileges to this kind of debtors.

If, however, the wage earner had agreed to let his wages remain with his employer as a loan, or the divorcee had agreed to let the amount of the "Ketubah" remain with her divorced husband as a loan, such debts were annulled by the Sabbatical year (Git. 18a).

The annulment of the debts by the Sabbatical year was not practiced for any long period during the Rabbinical era. Hillel, one of the most illustrious of the Rabbis, enacted the "Pruzbul", a document by which the creditor conveyed the collection of his debt to the court.

At the time of this enactment, commerce was already considerably developed among the Jews, so that the fear of the annulment of debts by the Sabbatical year hindered in the greater development of Jewish trade. People

were not willing to lend any money to merchants, and the necessity for reform was greatly felt. This needed reform came about in the form of the "Pruzbul" (Mishnah Shebeeth X 3).

VII—TENANTS.

1. House Tenants.

There were no provisions made in the Bible for regulating the relations between landlords and tenants. Most of the Jewish people during the Biblical period occupied themselves with agriculture and probably lived in huts which they themselves built. With the development of commerce and industry, great numbers of the rural population migrated to the cities and towns and became laborers and artisans. Naturally, many of these laborers and artisans could not afford to build or buy houses in the towns. Thus, the rental system developed, and together with it, the difficulties between landlords and tenants came to the fore. The Rabbis, therefore, found it necessary to enact certain provisions for the protection of the tenants.

When one had leased a house on a monthly rental, and did not specify the time when the term of that lease was to terminate, the landlord could not dispossess the tenant during the six rainy months, extending from the feast of Tabernacles to Passover, unless he gave notice to the tenant thirty days before the rainy season set in that he desired to terminate the tenancy. The rainy season in Palestine corresponds to our winter season. The Rabbis at the time of the Gemara likewise provided that the tenant is also obliged to give notice to the landlord of his intention to terminate his tenancy thirty days before the rainy season sets in. But there is no doubt that the Mishnah provided this regulation for the protection of the tenant and not the landlord. It seems, however,

that for the purpose of balancing the scales, the identical protection was later on extended to the landlord as well. If the landlord desired to dispossess his tenant during the summer, he was obliged to give him at least thirty days' notice.

In the larger towns, the landlord was required to give his tenant twelve months' notice prior to the time that he intended to terminate the lease, whether this was to occur in the rainy season or in the summer, because it was difficult to obtain premises in the big cities during the middle of the year. In the case of factories or stores, the landlord was obliged to give the tenant twelve months' notice, whether in big cities or in small towns, because shopkeepers generally sell on credit to the people of their vicinity and need ample time for the collection of their debts. A landlord had, therefore, to give his shopkeeping tenant ample time in which to collect all his debts. In the case of the shops of bakers and dyers, the landlord was obliged to give the tenant three years' notice, because bakers and dyers generally extended credit to their customers on long terms (Mishnah and Gemara B. Mezia 101b).

A landlord was expected to provide his house with a door, a door bolt, a lock, and such other equipment usually made by an artisan. It seems, however, that the landlord was not required to provide the house with anything that is usually made by the householder himself, for the tenant could then do it himself. The manure belonged to the lessor while the lessee had a right of property only to the ashes taken out of the oven (Mishnah B. Mezia 102a). According to the interpretation of the Gemara, the manure belonged to the lessor only when it was accumulated from cattle not belonging to either party to the lease, and the place where it had accumulated had not been leased to the tenant, but in no other instance (Gemara B. M. 102a).

If one had rented a house for one year and a leap year had afterward been proclaimed, i.e., an additional month had been inserted in that year's calendar, the benefit of this added month went to the tenant, and he was entitled to occupy the premises leased for the thirteen months that constituted the leap-year. But if the tenant had rented the house by the month and a leap year had been afterward proclaimed, the benefit of this added month accrued to the landlord (Mishnah B. Mezia 102a).

If the leased premises collapsed during the term of the lease, the landlord was bound to construct a new dwelling for the tenant of the same type and dimensions; if it had been a single house the owner was not allowed to build a double house in its stead, and vice versa. The number of windows in the former house could not be diminished, or increased unless same was done with the consent of both parties (Mishnah B. Mezia 103a).

The Gemara interpreted the Mishnah as follows:

If A had said to B: "I lease you this house (designating a certain house) for a period of one year" and during such tenancy the house became uninhabitable, the lessor was not obliged to build another house for the lessee to be occupied by him until the expiration of the term of the lease. The reason for this ruling is that the sole consideration for B's promise to pay a year's rent was that A should surrender the possession of certain particular premises designated in the lease. By the lessor's surrendering possession thereof to the tenant, he had already done everything he was obliged to do under the terms of the lease.

If, however, A had said to B: "I will lease you a house for one year" not designating any definite house, and thereafter while B was in possession of such house it was rendered uninhabitable, A is bound to build another house for B before he would be entitled to recover a

year's rental of B. The consideration for the lessee's promise to pay a year's rent in this instance being the fact of the lessor's obligation to provide the lessee with a residence for the term stipulated, and not the surrender of the possession of any particular house. In this case, however, the lessor was not obliged to build a dwelling exactly similar to the one previously occupied by the tenant, but he could build any kind of a house suitable for dwelling purposes (Gemara B. M. 103a).

But, if the lessor had said to the lessee: "I will lease you a house like this one," in such a case the lessor was bound to provide the lessee with a dwelling similar to the one expressly mentioned for the entire term of the lease, if such dwelling was rendered uninhabitable. He was not, however, compelled to build this house in a vicinity similar to the one wherein the previous house had been built (Gem. B. M. 103a).

2. Farm Tenants.

The consideration given by the lessee to the lessor for farm land was, either:

(a) A certain sum in money.

(b) A stipulated amount of produce of a certain kind, or

(c) A certain percentage of the harvest taken from the leased field (B. Mezia 104a).

If the leased field depended for its fertility upon a natural stream, or if there were a number of trees upon the field at the time of leasing and some time thereafter the stream ceased to run, or the trees were felled (it seems that this has reference to some natural destruction and not to destruction brought about by either party), the tenant was not entitled to deduct from the rental. If, however, at the time of the drawing of the agreement between the two parties, the lessee had expressly said:

"Let to me this field which depends upon this stream"; or "this field containing a number of trees", and if thereafter it happened that this stream had dried up or that the trees were cut down, the tenant could deduct the amount of his loss from the stipulated rental (Mishnah B. M. 103b).

The reason for the aforesaid ruling is, as stated in the Gemara (B. M. 104a), that when the lessee had said "this field" it was obvious that he had been on the premises that were to be leased and had surely examined carefully their condition and was consequently aware of the existence of the spring or the group of trees. Why, then, was he so cautious as to mention specifically "depending upon irrigation" or "containing a group of trees" if not for the reason that he had intended to make the spring or the group of trees the essence of the consideration in the deal. His promise to pay the rental stipulated was, therefore, made by him expressly conditioned by and dependent upon the existence of the spring or of the group of trees.

This, however, is almost the only ruling with the expressed intention of protecting the farm-tenant against his landlord. The rest of the Talmudic rules regarding the letting of land for farming purposes are intended for the protection of the landlord rather than the tenant. If one had leased a field on the consideration of giving to the lessor a certain per centum of the products of that field, and the field proved unproductive, he was obliged to work on it as long as there was any probability that the products raised would be sufficient for the seeding of the field the following year and was not permitted to abandon it summarily (Mishnah B. Mezia 105a).

If one had leased a field for a term less than seven years, he was not permitted to sow it with flax (Mishnah B. Mezia 109a). The lessee, at the expiration of the term of the lease, was bound to surrender the field in as good

a condition as it had been when he first took possession thereof. He was prohibited therefore from doing any act which tended to cause such injury to the field as would not be reparable before the time that he was expected to surrender possession of the field in question to the lessor. As explained by Rashi, the soil is injured by the roots of the flax to such a great extent that it cannot be brought back to its original state before the expiration of seven years. If, therefore, the lease was for a shorter term than seven years, no flax may be sown on it by the lessee, because the injury caused to the soil by its roots would still be there even after the termination of the lease. It would seem, then, that the tenant could plant flax only on the first year of a seven years' lease.

Furthermore, if one had leased a field and some time thereafter the crop was eaten up by locusts or was blasted by a storm, he may deduct from the rental named in the agreement if this calamity happened also to most of the fields in the vicinity. If, however, it was a misfortune that befel this particular field only, then the lessee had no right to deduct anything from the stipulated rental (Mishnah and Gemara B. Mezia 105b). Rabbi Judah went still further and said that, "if the lessee had leased the field for a money consideration, he could not deduct from the rental agreed upon under any circumstances (Mishnah B. Mezia 105b).

The basis of the above rulings is not made clear either by the Gemara or by any of the commentators thereon. Rashi, to Gemara 105b (obviously following the dicta found in the Gemara 106a) says: "that the reason the lessee cannot deduct from the rental in the last one of the cases cited in the above Mishnah is that the lessor may set up the counter claim that the misfortune that befell the field was due entirely to the ill-luck of the lessee. This plea could not, however, be advanced by

the lessor in the case of a general calamity, it being presumed that had he been in possession himself he would have suffered in the same manner. But, no matter what the reason for this ruling may be, it clearly proves that the Rabbis did not seek to protect the farm-tenant as much as they did seek to protect the home-tenant. The reason for this seems to be that the home-tenant leased his house not for business purposes, but for dwelling purposes, whereas the farm-tenant leased his field for purposes of business and profits to be derived therefrom.

The Rabbis, therefore, did not find it necessary to grant the farm tenant any special privileges for the sake of protecting their interests as they did to the house-tenant, as well as to other members of the submerged classes.

VIII—THE POOR

1. Obligations of the Landowners Towards the Poor.

The basic laws for the protection of the poor are duly provided for by the Bible. During the Sabbatical year, all planting was, as we know, prohibited. It was a year of rest for the soil. Whatever did grow during the Sabbatical year was to be for the poor only (Exod. 23. 10). When one was reaping the harvest of his field he was not permitted to reap the corner of his field, neither was he permitted to ingather the gleaning of his field harvest, or of his vineyard, but was obliged to leave them for the poor (Lev. 23.22).

This command to support the poor was upheld with great zeal by the prophets, and was handed down by them to the sages and the Rabbis. The rabbis enacted specific laws regarding the prohibition of the reaping of the corner of the field, the command to leave the gleaning of the harvest and the vineyard, and regarding other

kinds of charity. The Rabbis fully realized the fact that some of the landowners might possibly abuse the Biblical commandments regarding the care of the poor, and they endeavored to prevent it by all possible means. The Bible, for instance, did not provide for the exact portion of the harvest that the landowner was obliged to leave for the poor in the corner of his field, so that he could rid himself of this obligation by the leaving of one sheave. The Rabbis provided, therefore, that one should leave for the poor not less than a sixtieth part of his harvest or of the produce of his vineyard. Furthermore, if the field was small and one sixtieth of it did not amount to much, especially if the poor of the neighborhood were many, the landowner was morally obligated to increase the part given by him to the poor (Peah I Mishnah 2; Hullin 137 b).

According to the Biblical prescription, the law of leaving a part of the harvest for the poor was to be observed only in Palestine (Lev. 23.22), but the Rabbis provided that this law should also be binding on the Jewish landowners outside of the Holy Land (Hullin 137b).

The Bible provided that the landowners should give once, every third year, a part of their produce as a tithe to the poor (Deut. 26). There is no provision made in the Bible with regard to the amount of this tithe for the poor, but the Rabbis provided that produce enough for two meals must be given to any poor person coming to the barn (Peah VIII, 5).

In order that the landowners may not abuse this ordinance by giving the required part of their produce to their own poor relatives, to their servants or workers whom they had to support anyway, a law was enacted by the Rabbis providing that the landowners had no right to dispose directly of that part of their product, but that any poor person might come and take it (Peah V; Hullin 131b).

The Rabbis also provided that the tithe for the use of the landowners, which tithe it was their practice to spend and enjoy in other ways in Jerusalem every year, should not be collected in the third and the sixth year of the "Shemita", when the tithe for the poor became due, in order that the poor should receive a greater percentage of the produce of those years. The Rabbis did not abolish, however, the tithe which was devoted to the support of the Levites, for they were also classified among the poor (Rash. Hashanah 12b; see Rashi).

2. The "Kupah."

During the Biblical period, the Jews occupied themselves mostly with agriculture and their charity most likely consisted of the kind of giving such as we have already described, namely, of the produce of their land. In the Talmudic period, however, it appears that commerce and industry had already developed to a considerable extent among the Jews. Due to the increase of population and the unemployment that frequently occurs in a commercial or an industrial society, the numbers of the poor increased immensely. The small portions of the crop that the landowners were legally obliged to leave for the poor probably did not suffice for the support of this mighty army of the poor. Besides, there existed no moral reason for laying the entire burden of supporting the poor on the shoulders of the landowners alone, and thus to relieve entirely the merchants and the craftsmen. Many reforms in the matter of charity had, therefore, to be instituted.

The most important charitable institution during the Talmudic period was the "Kupah", a charitable fund that was to be established in every community under the supervision of a board of directors (Sanhedrin 17b). Legally, the poor of the town were recognized as the real owners of these charitable funds and the directors thereof acted only as their trustees. The duty of the directors

consisted only of taking charge, in the name of the poor, over the collection and the distribution of the local charity fund (B. Kama 36b).

In order to safeguard the poor funds from fraud and mismanagement, the Rabbis enacted a law that the collection of the donations made by the people should be made by not fewer than two and the distribution thereof by not fewer than three directors (Sanhedrin 17b; B. Batra 8b).

The "Kupah" provided the poor with food, clothes, and other necessities of life as well as their funeral expenses. The directors had the right to force contribution to the "Kupah" by any one who could afford at all to give charity and had lived in the community for a period not less than one month (Baba Batra 8a). The amount of the contribution to be paid by one was estimated by the board of directors. If one refused to pay the full amount assessed, the directors levied an attachment on his property (B. Batra 8b).

Just as there were people who wanted to avoid the giving of charity, so there were also some who wished to accept charity, even though they were not in great need. The Rabbis, therefore, enacted a law to the effect that those who had enough for two meals were not permitted to accept any food from the kitchen set apart for the poor, and those who had enough for fourteen meals, i.e., enough to support themselves for a fortnight, were not permitted to accept support from the charity funds (Peah VIII 7). Thus, the charity funds were distributed solely among those who really were in need of support, and were not allowed to be misused by swindlers.

The Rabbis, however, took heed of the fact that there were some people who were not actually paupers, and even owned considerable property, but had neither the money nor the food to support themselves with. A pro-

vision was therefore made that such people were to be permitted to accept charity, in order that they may not be compelled to sell their dwellings, their furniture, or their clothes (Peah VIII.8). One was not, however, permitted to accept charity if he possessed valuables or certain luxurious objects, and who could sell them, even though he would have to sell them for less than their intrinsic value (Ket. 68a).

The Rabbis also made provision for the needs of the poor consumer and accordingly prohibited dealers from putting articles of food into storage for the purpose of raising the price by cutting down the available supply. Similarly, it was prohibited to export articles of food to foreign countries, lest this practice should result in raising the price of these articles at home. Some of the Rabbis went even so far as to prohibit the making of profit from the dealing in food-stuffs, evidently intending to exclude the middleman (B. Batra 90; 91a). The Talmudists also gave the appointed authorities supervision over all dealings in articles of food and power to regulate the market places (B. Batra 89a).

SUMMARY

From the Talmudic laws, ordinances and regulations that have been quoted in the eight chapters of this thesis, it will be readily seen how thorough were the Rabbis' endeavors to protect the weaker classes of society against the stronger classes and elements. The Rabbis enacted special laws for the protection of the laborer whenever he was in need of the protecting arm of the Law. In whatever situation the laborer needed that protection—in questions regarding conditions of labor, the time of labor, the manner of performing this labor as well as payment thereof, the Rabbis ever sought to protect him and

to look after his welfare. They sought to protect the Jewish as well as the non-Jewish slave during the term of their servitude, and endeavored to find some means of effecting their release from bondage. The Talmudists provided also for the protection of minors, seeking to curb as much as possible, their parents or guardians in the exercise of their legal powers over them whenever these accrued to their own, and not the minors' benefit. They also provided laws and regulations for the protection of the woman against the man, and sought to help in every possible way the widow and the Agunah (the deserted woman) in their defenceless state. The Talmudists took heed also of the position of the debtor who, in their days, usually was a poor laborer or an artisan, and therefore enacted many laws for his protection against those who would exact interest or take pledges for loans made to him.

The Jewish jurists found it necessary to enact certain laws for the due protection of tenants against the landlords, for the evident reason that the tenants of that period usually belonged to the poorer and weaker elements of society and hence, in need of protection against the possible oppressions of the stronger element or class. They required of the landlord the giving of a reasonably lengthy period of time (in some instances as much as three years) as notice to his tenant of his intention to terminate his lease. They also enacted various other provisions for the tenant's welfare, such as, requiring the landlord to properly repair or reconstruct a dwelling in case the same became uninhabitable.

The Rabbis took especial pains to organize as well as to regulate communal philanthropy. They elaborated the ways and means for the collection and the distribution of charity, doing their utmost to impart to it its full Hebrew connotation, Zedakah, Justice, which means regard for the rights of the poor.

The Talmudic jurists, in their endeavor to protect the weak and helpless members of society, as in the above-enumerated instances, frequently ran the risk of being caught in logical inconsistencies and even of occasional violation of the letter, if not the spirit, of the Biblical Law. Moreover, in many of such cases, the Rabbis, deeming it inexpedient—for controversial or other reasons—to divulge the real motive for their enactments, found themselves obliged to assign some one or another reason that to us appears as sophistical or as not entirely within the bounds of sound logic.

The Rabbis invariably sought to discover the ethical or the religious principle underlying the various Biblical Laws and elaborated them in accordance with these principles and none other. The religious principles of justice and righteousness advocated by the Prophets were duly and zealously upheld by the Scribes and the Rabbis, and by them duly incorporated into the Talmudic Codes.

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